CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85177 OF 2016

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0125 to 0127-15-16 dated 28th October 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Mahle Behr India Ltd
Elpro Compound, City Surve No. 4270
Chinchwadgaon, Pune - 411033 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
ICE House, 41-A Sassoon Road, Pune - 411001 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 85178 OF 2016

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0122-15-16 dated 27th October 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Mahle Behr India Ltd
Elpro Compound, City Surve No. 4270
Chinchwadgaon, Pune - 411033 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
ICE House, 41-A Sassoon Road, Pune - 411001 ***…Respondent***

AND

SERVICE TAX APPEAL NO: 85179 OF 2016

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0125 to 127-15-16 dated 28th October 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Mahle Behr India Ltd
Elpro Compound, City Surve No. 4270
Chinchwadgaon, Pune - 411033 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
ICE House, 41-A Sassoon Road, Pune - 411001 ***…Respondent***

AND

SERVICE TAX APPEAL NO: 85180 OF 2016

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0125 to 127-15-16 dated 28th October 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Mahle Behr India Ltd
Elpro Compound, City Surve No. 4270
Chinchwadgaon, Pune - 411033 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
ICE House, 41-A Sassoon Road, Pune - 411001 ***…Respondent***

APPEARANCE:

Shri Vinay Jain, Advocate with Shri Aditya Jain, Chartered Accountant for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87674-87677 / 2019

DATE OF HEARING: 01/11/2019
DATE OF DECISION: 01/11/2019

PER: C J MATHEW

The appellant herein, M/s Mahle Behr India Limited, had filed claims for refund of ₹ 73,46,410, ₹ 84,57,791, ₹ 107,17,903 and ₹55,23,954 under rule 5 of CENVAT Credit Rules, 2004 for the quarters commencing July, 2013, October 2013, January 2014 and April 2014 respectively that were rejected by the original authority. On appeal, these rejections were upheld in order-in-appeal no. PUN-EXCUS-001-APP-0122-15-16 dated 27th October 2015 and order-in-appeal no. PUN-EXCUS-001-APP-0125 to 0127-15-16 dated 28th October 2015 of Commissioner of Central Excise (Appeals-I), Pune leading to these three appeals before us. As the issue involved is common, we take these up for disposal together.

2. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

3. It is on record that the claims had been rejected on the ground that exports had been effected by M/s Behr India Ltd (Engineering Services) whereas the registered entity, and the applicant for refund, was M/s Behr India Ltd/Mahle Behr India Ltd, that the invoices against which credit had been availed were issued to the former and not in the name of the applicant for refund and, likewise, the names in the FIRCs did not match. The plea of the appellant before the first appellate authority that the change of name, initiated by resolution dated 6th

December 2013, was finally given effect to only on 11th March 2014 leading to the document mismatch was not found acceptable.

4. In this context, we observe that the first appellate authority has observed that

> *'8.1 As regards the issue at Para 6(i) is concerned, the Appellant has contended that "Behr India Limited" / "Behr India Limited (Engineer service)"/"Mahle Behr India Limited" / "Mahle Behr India Limited (Engineer service)" are not different entities and that the extension "Engineer Services" is only for proper identification and the Service Tax registration number is given on entity's name and the entity in the present case is "Behr India Limited". They submitted a C.A. certificate to this effect. I find that the objective behind granting refund is to provide export incentive to exporting unit. The fundamental requirement for availing the benefit of refund, which goes without saying, is that the Claimant must be the exporter. To put it in other words, only an Exporter can file- a claim for refund. There is no question of an entity who has not exported filing a claim for refund. The evidential document in this regard is Export Invoice, which has to be in the name of the Claimant / Exporter. The Refund Sanctioning authority is duty bound to ensure that refund is granted to the Claimant only on the basis of documentary evidences submitted to him/her in support of the claim-In the instant case, the Appellant had filed the three claims under Rule 5 of the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR) i.e. refund of accumulated cenvat credit of input services used in providing output service which were exported. The contention of the Appellant about the names are untenable, in as much as, the scrutiny of the claim documents is made with the statutory records available. The*

> *veracity of the claimant / exporter is made from the ST-2 Certificate.: When the name of the claimant / exporter varies from that appearing, in, the ST-2 Certificate, there is no scope /provision in law by which the. Sanctioning Authority can grant refund. As discussed in Para 7,I find that the name M/s. Behr Engineering Services does not find any mention in the chronological disclosure of events of change of name, apparently, as it is only a colloquial name or that the "Engineer Services" is only for their internal identification and resultantly the said name is not forthcoming in their Service Tax Registration Certificates dated 08.012.2013 and 20.06.2014. Therefore, I find that the Refund Sanctioning authority has rightly rejected the claim on the instant issue, as the exporters were not done by M/s.Behr India Ltd. / M/s. Mahle Behr India Ltd. (Service Tax registrant), by M/s Behr Inia Ltd (Engineering Services), who are not a Service Tax Registrant.'*

5. This is patent misconstruing of rule 5 of CENVAT Credit Rules, 2004 which, as a procedural stipulation, does not require any interpretation of the intent behind the provisions. Needless to say, the said refunds are not intended as incentive but is in pursuance of the principle that neither should the value of exports carry the burden of tax or nor that it should be borne by the exporter. It is, therefore, the bounden obligation of the competent authority to sanction refund to the extent that exports are evidenced.

6. The circumstances in which the change of name has been effected was amplified in the contention made before the first appellate authority. The process of change of name is laborious and rigourous

with unquestionable lapse of time between the initiating of the proposal and final incorporation in documents. Neither of the lower authorities have found the claim of exports to be unacceptable. Nor is there any finding that the change of name is not attributable to *bona fide* reasons.

7. Accordingly, we set aside the impugned order and remand the claims back to the original authority to reconsider the submissions made by the assessee and to disallow the claim for refund on the ground only upon, and to the extent of, positive evidence that the exporting entity and the claiming entity are, or ever was, not the same.

8. The appeals are, therefore, allowed by way of remand.

(Pronounced in open court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*