CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70197 of 2016
[Virtual Mode of Hearing]

(Arising out of Order-In-Appeal No. NOI-EXCUS-002-AAP-0186-15-16, dated 03.12.2015 passed by Commissioner (Appeals), Central Excise & Customs, Meerut-II.)

M/s. B.L. Kashyap & Sons Ltd.

.....Appellant

(B-1, Extn/E-23, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044.)

VERSUS

Commissioner, CGST & CE, Noida-II Commissionerate

....Respondent

(Hotel Formule-1, Plot No.3, Wegmans Business Park, Knowledge Part-III, Greater Noida, Uttar Pradesh.)

<u>APPEARANCE:</u>

Shri Jatin Mahajan, Advocate for the Appellant
Shri Santosh, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO<u>.- 70180/2026</u>

DATE OF HEARING : 30.04.2026
DATE OF DECISION : 22.05.2026

PER : RAJEEV TANDON

A show cause notice dated 21.04.2014 demanding an amount of Rs.14,72,419/- towards short payment of Central Excise duty for the period April 2012 to March 2013 was issued to M/s. B.L. Kashyap & Sons Ltd. The Notice alleged under-valuation of goods manufactured and supplied on job-work basis. The said show cause notice was issued pursuant to an audit objection raised by the audit team upon scrutiny of the records of the main Noticee M/s. Fedders Lloyd Corporation Ltd. (hereinafter referred to as 'FLCL'), Sikandrabad. The appellant herein is a co-noticee in the matter and before proceeding any further it may be appropriate to place on record that the appeal filed by the main party-M/s. Fedders Lloyd Corporation Ltd. also a co-appellant with the present appellant in the matter was earlier dismissed for non-prosecution in terms of Rule 20 of the CESTAT Procedure Rules, 1982. The appeal filed by the present appellant, however came to be restored subsequently in accordance with the order vide order sheet dated 17.12.2025 subject to a deposit of Rs.10,000/- to the National Defence Fund. That direction since stands complied with.

2. It is in this backdrop, that the present appeal is being heard.

3. The short question involved in the matter concerns perusal of the sales register, whereupon it was noticed by the authorities that the main noticee FLCL had manufactured and cleared pre-fabricated steel structures to the appellant under a job-work arrangement, whereas Central Excise duty was paid on the finished goods, based on the value of the raw material supplied + the job-work charges thereby alleging infringement of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

4. It was submitted by the appellant before the Adjudicating authority that the show cause notice was completely void of any

credible evidence of evasion of Central Excise duty by the appellant. Merely stating, that it was by way of mutual planning with the main noticee in the matter, without any evidence thereto would not stand the test of scrutiny. The appellant submitted that they had placed the order for job-work on FLCL, for execution of the work contract awarded by IIT, Delhi, to the appellant and there had been absolutely no understanding or planning for purpose of evasion of duty between the two parties. They further submit that this charge of a nexus by the department is made out in thin air and is without any substantiation. The appellant further submitted that there was no question of imposition of penalty upon them in terms of Rule 26(1) of the Central Excise Rules.

5. It is noticed from records that the alleged short levy of duty has been confirmed by the lower authorities against the main noticee FLCL. There is a categorical finding to the effect of M/s. FLCL having failed to discharge appropriate duty on finished goods in para 16 of the order of the adjudicating authority.

5.1 The appellant herein is contesting both the charge of under-valuation as well as the imposition of penalty of Rs.3.50 Lakh upon them by the Adjudicating authority. In appeal proceedings before the Commissioner(Appeals), the Order-in-Original was upheld and the appellant’s appeal rejected.

6. The Ld.Counsel for the appellant has submitted that they are engaged in construction activities and are duly registered for discharge of Service Tax liability with the concerned authorities

and have discharged their Service Tax liability on the service element involved in the execution of the 'Works Contract Service' undertaken by them. He submits that in the present matter they got a contract from IIT Delhi for construction of Lecture Theatre cum Lab Complex. The said contract involved civil work apart from installation of internal electrical fittings, fire alarm and fire fighting system, public address system, and related work etc. It was for execution of the said Works Contract that the appellant had got some job-work done through FLCL, Sikandrabad for fabrication of structural steel items that was used for the execution of the aforesaid works in the job order contracted. Upon a query from the Bench the Ld.Advocate specifically submitted that the appeal filed in the matter by FLCL, Sikandrabad was dismissed by this Tribunal for want of prosecution.

7. It is the case of the appellant that they had received the said goods from FLCL under cover of Central Excise invoices. The Ld.Advocate submits that though the department sought from the appellant the sale price of the goods manufactured by FLCL for determination of duty liability, they had explained to the authorities the facts relating to the transaction *inter alia* stating that the impugned works contract was executed by them partly through goods received from Sikandrabad unit of FLCL and partly from the goods received from their own Haridwar unit. He submits that no case of valuation of goods under Rule 10A(2) of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as 'Valuation Rules') was

made out against them, as Rule 10A(2) is applicable where the job-worked goods are not sold by the principal manufacturer at the time of their removal, but are transferred to some other place and sold thereafter. He submits that the appellant never sold the said goods and the same were used in execution of the works contract. The said goods were tailor-made to meet the specific requirements, assigned by way of the aforesaid works contract. The Ld.Counsel therefore submits that the said Rule is rendered inapplicable under the circumstances and emphasizes that for the contracted goods, the manufacturing activity undertaken, was for use of the said manufactured goods in the execution of the works contract. Further, in accordance with the definition of the word 'sale' [Section 2(h) of the Central Excise Act, 1944], only such job-worked goods would come within the ambit of Rule 10A(2), the possession of which is transferred by the principal manufacturer in ordinary course of business towards a consideration of payment (cash or deferred). He submits that the use of such goods in execution of the said works contract would not mean transfer of goods in ordinary course of trade or business within the realm of the definition of term 'sale' [Section 2(h) of the Central Excise Act, 1944].

8. The Ld.Advocate further submits that the word 'manufacturer' though qualified by the adjective Principal would also have the same meaning as assigned to it, in terms of Section 2(f) of the Central Excise Act, 1944. Accordingly, it would be clear that the provisions of Rule 10A (ii) of the Valuation Rules would not be applicable to a contractor, who

gets the goods manufactured on job-work for being used in the execution of works contract.

9. We have heard the Ld.AR for the Revenue, who reiterates the findings of the lower authority and emphasized that in fact the appellant had resorted to under-valuation by way of planning and an understanding with the main appellant, from whom the appellant had procured the goods.

10. From the facts aforesaid it is clear that the appellant is certainly not a manufacturer or a principal manufacturer, but is a contractor discharging the 'Works Contract Service', for fulfillment whereof the appellant was required to get the certain items fabricated for installation of the various requisites for setting up of the Lectures Theatre-cum-Lab Complex.

11. It is evident from records that the appellant had procured the aforesaid tailor made steel structures for execution of the works contract assigned to them by the IIT, Delhi as aforesaid. That the items procured were ultimately utilized and consumed in the execution of the Works Contract is also undisputed. It is also clear from records that the appellant had procured the said goods against proper invoices, issued by FLCL that are a part of record. We do not find a semblance of evidence in support of the theory of a preplanned conspiracy, hatched by the appellant. Once the goods are supplied to the appellant against a proper Central Excise invoice it is obvious that the appellant would have no reason to believe that FLCL had not levied appropriate duty amount and had thereby under-valued the goods. We find that

the lower authorities are completely silent on this factual aspect and contention raised by the appellant in the matter. We also note from the records that the authorities have subjected the main appellant FLCL to a penalty under Rule 25 of Central Excise Rules, 2002, that has been sustained by the first appellate authority. That being so, it cannot be implied, that the plea of the present appellant would have no merit. It is borne out from records that FLCL had produced the goods on job-work basis for the appellant and that is why the authorities have rightly fastened the duty liability, if any, upon FLCL. It is also a fact on record that the appellant was engaged in the discharge of 'Works Contract Service' and this fact has not been disputed or contested anywhere by the departmental authorities. That being so, it belies logic to state as to how the goods used in execution of a Works Contract can be considered as goods sold in ordinary course of business or trade. For ready reference Rule 10A(ii) of the Valuation Rules is enumerated hereinbelow:

> **[10A.** Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then, -
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> > (ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods <u>are to be sold</u> after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price as the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time

> and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;

12. It is evident from above that the said Rule is applicable only where the job-worked goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after the clearance from the job-worker's premises. The appellant has vehemently submitted that they had never sold the said goods that were cleared from the job-worker's factory/premises and the same were used for fulfillment and in the execution of the Works Contract awarded to them. A reading of Rule 10A(ii) would show that it relates and is applicable to the person, who gets the goods manufactured on job-work basis as a principal manufacturer. This clearly suggests that the Rule is applicable when one manufacturer gets some manufacturing process done through a job-worker. The said Rule therefore would have no applicability when a civil contractor who is engaged in the execution of a works contract, and is concerned with the manufacturing activity undertaken for the use of such manufactured goods in the execution of the Works Contract. It is therefore clear that the said activity would not fall within the meaning of the word 'sale' as assigned in terms of Section 2(h) of the Central Excise Act. The term 'sale' used in Rule 10A of the Valuation Rules will accordingly derive its meaning from the said definition of 'sale' as contained in Section 2(h), which reads as under :

2. Definitions

In this Act, unless there is anything repugnant in the subject or context, -

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(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;

13. There is thus no gainsaying that the word 'sold' used in Rule 10A(2) of the Valuation Rules would require to be considered within the grammatical variations of the word 'sale'. Thus those job-worked goods alone would come within the ambit of Rule 10A(2) where the possession of which is transferred in ordinary course of business or trade for cash or deferred payment or other valuable consideration. Use of goods in execution of Works Contract would not mean transfer or possession of goods in ordinary course of trade or business. The appellant had procured the said goods against proper Central Excise invoices and had no reason to doubt the veracity thereof. There is not a shred of evidence in support of the conspiracy theory of the department, other than simply stating so. In the absence of any support thereto, the department's contention is no more than a rudderless-baseless allegation, which holds no credence.

14. In view of our aforesaid discussions, we do not see that the Revenue has made out a fit case for imposition of penalty under Rule 26 on the appellant for dealing with undervalued job-work fabricated goods by FLCL. The Revenue has clearly failed in

establishing the conspiracy theory. Also on merits the Revenue has failed to make out a case in the matter *qua* the present appellant.

15. The order of the lower authority *qua* the appellant is thus set aside and the appeal filed is allowed.

(Pronounced in open court on - **22.05.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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