IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 78111 of 2018

WITH

Excise Cross Objection No. 77255 of 2018

(Arising out of Order-in-Appeal No. 667/HWH/CE/2017-18 dated 19.03.2018 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

The Commissioner, : Appellant
Howrah C.G.S.T. & C.Ex. Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. Concept Project & Consultancy Services : Respondent
Eksara, Chamrail, Lilua, Kona,
Howrah – 711 323

APPEARANCE:

Shri S. Dutta, Authorized Representative, for the Appellant / Revenue

Shri Shovendu Banerjee, Advocate, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77902 / 2025

DATE OF HEARING: 09.12.2025

DATE OF DECISION: 16.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 667/HWH/CE/2017-18 dated 19.03.2018, wherein the Ld. Commissioner of Central Excise (Appeals-II), Kolkata has dropped the demand of duty, along with interest and penalty, as had been confirmed in the Order-in-Original No. 53/ADC/CE/KOL-II/Adjn/2016-17 dated 28.02.2017 passed by the Commissioner of Central Excise, Kolkata-II, M.S. Building, 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are that M/s. Concept Project & Consultancy Services (hereinafter referred to as the "respondent") are manufacturers of "Structures and parts thereof made of Iron and Steel", falling under Tariff Item No. 7308 9090 of the Central Excise Tariff Act, 1985. It has been alleged that the respondent has manufactured and clandestinely removed the finished goods from the factory of production, valued at Rs.14,39,65,038/- during the period from 2010-11 (from July, 2010 onwards) to 2014-15 (up to July, 2014), without payment of central excise duty of Rs.1,63,93,207/- (including cess).

3. On the basis of the above allegations, a Show Cause Notice was issued to the respondent on 10.07.2015.

3.1. After due process, the said Notice came to be adjudicated vide the Order-in-Original dated 28.02.2017 wherein the demand of central excise duty raised in the Show Cause Notice was confirmed, along with interest; a penalty equal to the amount of duty demand confirmed was imposed on the respondent under Section 11AC of the Central Excise Act, 1944, along with a penalty of Rs.50,000/- under Rule 27 of the Central Excise Rules, 2002.

3.2. On appeal, the Ld. Commissioner (Appeals-II), vide the impugned order dated 19.03.2018 has set aside the demands of duty along with interest and penalties confirmed in the above said Order-in-Original.

3.3. Aggrieved by the dropping of the demands, the Revenue has preferred the present appeal.

4. In their grounds of appeal, the following grounds have been raised by the Revenue: -

(i) The Commissioner (Appeals) erred in not considering the fact that assessee had manufactured truss, columns, girders etc. from the layout of the given structure; they used Angles, Channels, Plates, Joists, Tubes, Rods etc. for manufacture of the impugned goods; the said materials were cut and then welded together to fabricate the impugned goods in their factory; in the instant case, as a result of the process undertaken by the assessee, distinct and identifiable goods emerged from the said raw materials; the said goods were nothing but structure/parts of structure. Iron & Steel structures and parts thereof are covered under the heading 7308/sub heading no. 7308 9090 of the Central Excise Tariff Act, 1985; such goods were sold to customers. Thus, the contenetion of the Revenue is that a new and marketable goods emerged in the process undertaken by the said assessee. Such process is covered by the definition of manufacture laid down under Section 2(f) of the said Act and the goods emerging out of such process attracted Central Excise Duty in terms of Section 3 of the said Act.

(ii) Instant Show Cause cum Demand Notice was issued on the basis of investigation carried out by Kolkata-II Central Excise Commissionerate against the dealer M/s Dankuni Steels Ltd. who passed on Cenvat credit without receiving the goods and proceedings have already been initiated against the said dealer by the jurisdictional Central Excise Authority and finally

the Central Excise Registration Certificate in respect of the said Mis. Dankuni Steels Ltd. (dealer) had been revoked by the competent authority vide Order-in-Original No. AC-01/CE/HWH-II/15-16 dated 24.09.2015. It was also observed that the dealer M/s. Dankuni Steels Ltd. had indulged in false transactions to pass on Cenvat credit fraudulently without any establishment. Further, investigation had clearly brought out that the paper transactions have taken place without actual movement of goods and credit has been passed on fraudulently. Accordingly, the involvement of the dealer M/s. Dankuni Steels Ltd. in fraudulently passing Cenvat credit to Mis. Shree Jagannath Iron Foundry Pvt. Ltd. without delivery of the goods was established.

(iii) The Commissioner (Appeals) had erred by not considering the CBEC Circular No 107/18/95-CX dated 02.03.1995 wherein it was clarified that no Cenvatable invoice could be issued by a registered dealer until goods have been received by them and a dealer could not receive the goods without a go-down. Proper investigation was duly carried out at the end of dealer M/s. Dankuni Steels Ltd., which resulted in the discovery of issuance of fake invoices by the said dealer and as the dealer had no go-down for dealing with such huge quantity of inputs against which only documents were issued for passing on the credit without supply of the inputs and accordingly, the department had revoked the Central Excise registrations of the said dealer on observing due process.

(iv) The conjoint reading of Rule 4 and 9 of the Cenvat Credit Rules, 2004 states that for taking Cenvat credit it is essential that inputs should be received in the factory accompanied by specified documents along with the inputs and these views have also been upheld in by the CESTAT in the case of *Baldev Raj Ram Murti [2007 (220) ELT 786 (Tri. Del.)]*, wherein it had been held that "in case dealer is not in possession of go-down at the shown place, the transaction can be inferred to be only paper transaction

(v) The Commissioner (Appeals) had not considered the fact that the Adjudicating authority in his findings stated that the assessee had not produced any concrete evidence before him to prove that the inputs were actually received in their factory and accounted for in their records.

(vi) The department had alleged that assessee had availed Cenvat credit on the strength of invoices issues by M/s. Dankuni Steels Ltd. (dealer), proved to be non-existent, which means that the department found discrepancy in the invoice against which they supplied the impugned goods.

(vii) So, the observation of the Commissioner (Appeals) that the department neither found any discrepancy nor made any dispute in respect of the submitted documents nor proved anything adverse in respect of receiving and use of those goods into the factory premises of the assessee, is not tenable

(viii) From the investigation, it was evidenced that the supplier has been engaged in fake transactions and on the basis of fake invoices issued by the supplier, the assessee had made entries in their statutory records. So, when the invoice of manufacture is fake, the entries maintained in the statutory records of the assessee are treated to be fake. Hence, the observation of Commissioner (Appeal) that the department had failed to prove beyond doubt that the subject goods were not received by the assessee and it was only a paper transaction is not acceptable.

4.1. Additionally, the Ld. Authorized Representative of the Revenue appearing before us has relied upon the following case-law in support of their contentions:-

i. Commissioner of C.Ex., Ahmedabad v. Richardson & Cruddas Ltd. [2012 (280) E.L.T. 249 (Tri. – Ahmd.)]

ii. Mahindra & Mahindra Ltd. v. Commissioner of C.Ex., Aurangabad &ors. [2005 (190) E.L.T. 301 (Tri. – LB)]

5. On the other hand, the Ld. Advocate representing the respondent submitted that the respondent has manufactured truss, columns, girders, etc., from the layout of the given structures; the materials were cut and then welded together to fabricate the required structures, for which the main raw materials were Angles, Channels, Plates, Joists, Tubes, Rods, etc. It is his submission that the respondent has fabricated these structures at their factory premises; the ground taken by the Department is that the said goods were not fabricated

at the site of erection, but at their factory premises and thus, such conversion of the aforesaid raw materials and components rendered the products marketable.It is pointed out by the Ld. Advocate for the respondent that the goods were not being sold by the respondent to the clients; they were fabricating the structures as per the requirement of their clients and thus, the structures are not marketable as the same are tailor-made as per the specific requirement of the customer. In view of the above, it is the submission of the Ld. Advocate for the respondent that the Ld. Commissioner (Appeals) has rightly decided that the goods in question are not marketable and thus dropped the demands. Accordingly, he prayed for rejecting the appeal filed by the Revenue.

6. Heard both sides and perused the appeal records.

7. We find that the respondent has manufactured truss, columns, girders, etc., as per the layout of the given structures. They use Angles, Channels, Plates, Joists, Tubes, Rods, etc., for fabrication of the said structures. The said materials are cut and then welded together to fabricate the impugned goods in their factory. The structural items that came in their workshop were unassembled part of shed, intended for erection at the customers' site. We observe that these unassembled parts were tailor made goods, removed in CKD condition and they are not goods capable of being bought and sold in the market.

7.1. We have perused the purchase orders produced by the respondent. On perusal, we find that these purchase orders contain provisions for payment of VAT and Service Tax on erection and they do not

contain any reference towards payment of central excise duty.

7.2. We also find that the Department has not brought in any evidence to establish that the goods manufactured by the respondent are capable of being bought and sold.

7.3. Further, we take note of the respondent's submission that they have paid Service Tax on the services rendered by them and thus the services rendered by them are, in fact, rightly classifiable under the category of 'works contract service'. Thus, we observe that the Respondents have not undertaken any manufacturing activity chargeable to central excise duty.

8. We find that the Ld. Commissioner (Appeals), in the impugned order, has given a categorical finding that the goods manufactured by the respondent are not marketable. For ease of reference, the said findings of the Ld. Commissioner (Appeals) are reproduced below: -

> *"6. From the facts brought out in the impugned order I find that the appellant was under contracts with their different customers for supply, fabrication and erection and transportation of structural work for factory shed at their customer site. For this purpose, they purchased duty paid angles, channels, plates, joists, tubes etc.; such raw materials were cut to different sizes and then welded together to fabricate truss, columns, girders etc from the layout as per specification of their customer in their factory. The said goods were then removed in parts from their factory to the customer site and assembled and erected as factory shed which is permanently embedded to earth. They did not treat the above items as dutiable and therefore, did not pay duty on such goods removed from their factory. There is no dispute that the final goods, i.e. factory sheds are non-excisable, The Department held the structural*

goods removed from their factory as a newly identifiable and marketable goods emerging out of a manufacturing process classifiable under sub-heading 73089090 of the Central Excise Tariff as steel structure and hence excisable and liable to duty. The Appellant have mainly contended with case laws that the impugned goods are not marketable and hence not dutiable. Thus, the issue to be decided is that whether or not the appellant is liable to pay duty on different steel structures fabricated and pre-engineered in their factory as parts of factory shed as per specification of their customer and removed from their factory for erection at site.

7. In this regard I find that in the explanation to the Section 2(d) of the Central Excise Act, it is given that, "For the purpose of this clause goods include any article or material substance which is capable of being bought and sold for a consideration and such s shall be deemed to be marketable." Thus, it is clearly seen that the twin test contemplated by the Excise law is that the goods must not only be manufactured but they also should be capable of being marketed; an article does not become liable to excise duty merely because of its specification in the schedule to the Central Excise Tariff Act unless it is saleable and known to the market. Here the impugned goods are undoubtedly identifiable as steel structures and are classified under the Central Excise Tariff. However, regarding marketability of the impugned goods, I find that it is also undisputed that the impugned goods were tailor-made items fabricated as per the specification of the appellant's client only. They were intermediate parts of their client's factory shed used only for erection of such shed and not used anywhere else. The only customer of the impugned goods was the appellant's client under whose specification and design the goods were made for as parts of factory shed for the sole purpose of erection of shed. So, the impugned goods were not capable of being brought to market for sale neither they were bought or sold. On the other hand, I find that the Department has also not adduced any contrary evidence to show that the goods were capable of being sold in the market or have been sold."

8.1. We agree with the above findings of the Ld. Commissioner (Appeals) for concluding that the goods

manufactured by the respondent have not passed the test of marketability. We also find that the Ld. Commissioner (Appeals) has taken note of the fact that "there is no evidence coming from the department to show that the said specified products are bought and sold in the market as a commodity". In support of the above, the Ld. Commissioner (Appeals) has relied upon the decision of the Hon'ble Supreme Court in the case of *Gujarat Narmada Valley Fert. Co. Ltd. v. Collector of C.Ex. &Cus. [2005 (184) E.L.T. 128 (S.C.)],* wherein it has been held as follows: -

> *"4. The appellant is right in its contention that the decision of the CEGAT is based on conjectures, hypotheses and is illogical. After the decision of this Court in Bhor Industries Ltd. Bombay v. Collector of Central Excise, Bombay 1989 (1) SCC 602, unless the product is capable of being marketed and is known to those who are in the market as having an identity as a distinct identifiable commodity that the article is subject to excise duty. Simply because certain articles fall within the schedule does not make them marketable. Actual sale in the market is not necessary but the articles must be capable of being sold in the market or known in the market as goods."*

8.2. We find that the above decision cited by the Ld. Commissioner (Appeals) is squarely applicable to the facts and circumstances of the present case.

9. We have also gone through the decision cited by the Revenue in the case of *Commissioner of C.Ex., Ahmedabad v. Richardson & Cruddas Ltd. [2012 (280) E.L.T. 249 (Tri. – Ahmd.)]* wherein the goods manufactured by the petitioner were sold to their customers. However, we find that in the present case, the goods are tailor-made according to the

requirements of the clients and there is no evidence brought on record to show that these goods are capable of being marketed or that they are bought and sold in the market. Therefore, we find the above decision cited by the Revenue to be distinguishable on facts and hence, inapplicable to the facts and circumstances of the present case.

9.1. Further, regarding the reliance placed by the Revenue on the decision in the case of *Mahindra & Mahindra Ltd. v. Commissioner of C.Ex., Aurangabad & ors. [2005 (190) E.L.T. 301 (Tri. – LB)],* we find that in the said case, fabrication of iron and steel structures like roof frame of sheds at the construction site was considered as a process amounting to manufacture. However, in the present case, the activity undertaken by the respondent would amount to undertaking works contract service. Further, there is no evidence available on record to prove that the goods were capable of being marketed and hence, the process undertaken by them cannot be termed as 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944. Thus, we find that the decision in the case of *Mahindra & Mahindra Ltd. (supra)* cited by the Revenue is also distinguishable from the facts and circumstances of the present case.

10. In view of the above findings, we do not find any infirmity in the order dropping the proceedings against the respondent passed by the Ld. Commissioner (Appeals).

11. Consequently, we uphold the impugned order dated 19.03.2018 passed by the Commissioner (Appeals) and reject the appeal filed by the Revenue. The cross objection filed by the respondent stands disposed of accordingly.

(Order pronounced in the open court on **16.12.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd