(2015) 07 AHC CK 0232

In the Allahabad High Court

Case No : Central Excise Appeal No. 283 of 2012

Indfos Industries Ltd. APPELLANT

Vs

Commissioner of Customs & C. Ex. RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Citation : (2015) 40 STR 220

Hon'ble Judges : Tarun Agarwala and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : Shubham Agrawal, Counsel, for the Appellant; Amit Mahajan, Counsel, for the Respondent

Judgement

1. Heard learned counsel for the parties. The appellant is engaged in the manufacture and repairing of Hydraulic Service Trolleys (HSTs) which is taxable under the Service Tax Law.

2. The contract for maintenance and repair of HSTs was executed between Indian Air Force and M/s. Hindustan Aeronautics Limited, Banglore. HAL executed a subcontract for maintenance with the appellant. The appellant was issued a show cause notice demanding service tax for the period 29th September, 2004 to 3rd March, 2005. The Tribunal by its order dated 25th May, 2011 [2012 (26) S.T.R. 129 (Tri. - Del.)] disposed of the appeal and remanded the matter to the Adjudicating Authority to re-examine the issue as to whether the appellant is liable to pay service tax or not. One of the grounds contended by the appellant was that in view of the circular issued by the department, no service tax was payable by the sub-contractor.

3. According to the appellant, he was a sub-contractor of M/s. Hindustan Aeronautics Limited, Banglore, who in turn was given a contract with the Indian Air Force.

4. Against the order of remand, the appellant has filed the present appeal. Having heard Sri Shubham Agarwal, learned counsel for the appellant and Sri

Amit Mahajan, learned counsel for the department, we find that the issue is required to be examined as to whether the appellant is a sub-contractor or not and if he is sub-contractor whether he is still required to pay service tax or not is also to be examined. These questions of fact can be best adjudicated by the Adjudicating Authority. Further, other issues so raised by the appellant can also be considered by the adjudicating Authority. Consequently, we are not inclined to interfere in this appeal at this stage. The appeal is dismissed with the observation that all issues will be decided afresh by the Adjudicating Authority.