

indfos Industries Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-28-2007

Reported in : (2007)11STJ22CESTATNew(Delhi)

Judge : N T C.N.B., M Ravindran

Appellant : indfos Industries Limited

Respondent : Cce

Judgement :

1. The appellant is an Engineering Company. It manufactures Hydraulic Service Trolleys (HSTs) in its plant at Noida. The manufacture is in terms of a Long Term Business Agreement with M/s Hindustan Aeronautics Limited (HAL). The appellant also undertakes repair, over-haul and maintenance of these HSTs.
2. The end user of the above HSTs is the Indian Air Force as these are deployed in military airports for the use of air force aircrafts.
3. "Maintenance and repairs services" are liable to service tax. In the present appeals, the appellant contests this levy in regard to the maintenance of HSTs. The ground taken is that revenue authorities have clarified that no Service Tax Registration is required to be taken by a sub-contractor and as main contractors are liable to pay the tax. The contention is that the main contractor in this case is HAL and appellant is a sub-contractor in terms of the clarification.

4. The clarifications referred to are to be found in Circular No.B.43/5/97-TRU dated 2-7-1997 of CBEC in the context of Service tax as consulting engineers' and Question and Answer in "Frequently Asked Questions on Service Tax" published by Directorate of Publicity and Public Relations, Customs and Central Excise. These may be noted: 3.4 The services should be rendered to a client directly, and not in the capacity of a sub-consultant/associate consultant to another consulting engineer, who is the prime consultant. In case services are rendered to the prime consultant, the levy of service tax does not fall on the sub-consultant but is on the prime or main consulting engineer who raises a bill on his client (which includes the charge for services rendered by the sub-consultant) (Circular No. B.43/5/97 - TRU).

Q2.2 Whether service tax is applicable on maintenance and repair services provided by persons other than authorized service centers of companies? (ii) a manufacturer or any person authorized by him in relation to maintenance or repair or servicing of any goods or equipments, excluding motor vehicle. Therefore, service tax is applicable on maintenance and repair services provided by all such persons.

Q2.3 If there is a total sub-contract of the service, whether sub-contractor is supposed to take out a registration and discharge the tax liability? Ans. The sub-contractor need not take a registration under Service Tax. In all such cases. Service Tax is to be paid by main service provider.

5. Reliance is also placed on the decision of this Tribunal in the case of BBR (India) Limited v. CCE, Bangalore -III as reported in 2006 (4) STR 269 (Tri. Bang.).

6. The learned SDR would point out that the manufacture, maintenance etc. in the present case are in terms of a principal to principal basis agreement between HAL and the appellant manufacturer and Indian Air Force has no concern with it. The learned SDR would point out that the agreement makes it clear that HAL is the purchaser of appellant's supplies. The Indian Air Force is only the user. Further, the entire design development etc. of the product in question has been done by HAL and HAL holds intellectual property rights in regard to the HSTs manufactured according to its design. The Indian Air Force has assigned the entire

work relating to design, development, procurement etc. to the HAL since it is an expert organization on aviation products under the Ministry of Defence. According to the learned SDR, the relationship of contractor and sub-contractor does not exist in the present case.

Instead, the relationship is that among a user, a procurer and a supplier. The learned SDR also would point out that the clarifications of the board or the publication of the Directorate of Publicity and Public Relations do not confer any exclusion from tax in favour of the appellant. In regard to the Circular dated 02/07/97, the clarification is in the context of the requirement that consultancy service should be rendered to a client. In the present case, the supply of the goods and maintenance service are in terms of a contract to HAL. In relation to the Question and Answer, publication, learned SDR would point out that the answer only states that service tax is to be paid by the main service provider and the subcontractor need not take a registration.

The submission of the learned SDR is that in the present case, there is only one (repair) service provider and i.e. the appellant in as much as the entire repair and maintenance is carried out by the appellant and therefore, in terms of the answer also, the appellant is to pay the tax. As regards, the judgment of the Tribunal in the case of BBR (India) Limited, the learned SDR would point out that in that case, the SWISS Company BBR was a sub-contractor to IRCON while the service agreement was between IRCON and Indian Railways. The contention of the learned SDR is that the facts of that case are not applicable to the present case at all. He would also point out that the Question and Answer publication cannot be taken as any specific clarification in as much as they were issued only to explain commonly raised procedural issues and these do not, and cannot, expand or abridge the scope of the levy. He also would emphasise that the Questions and Answers publication is subject to the disclaimer that they have no application to specific issues under the statute.

7. We have perused the record and considered the submissions of both sides. The agreement between the parties and arrangement with the Indian Air Force show that the appellant is the sole contractor to HAL in regard to manufacture and

maintenance of HSTs. HAL acts as a development and procurement agency. Therefore, appellant is not a sub-contractor to HAL. The clarifications in question are to the effect that the main contractor is liable to pay the tax. The main contractor means the person who is responsible and obliged under the contract to provide the taxable service. In the present case, the taxable services are maintenance and repair. The whole of those services are the contractual obligation of the appellant and appellant is responsible for them to HAL. Thus, there is no contract and sub-contract in the present case. That the beneficiary of the service is someone other than the purchaser of the service is altogether irrelevant.

8. In the above factual and legal situation, we find no merit in the present appeals in as far as they relate to the tax demand on the appellant and the appellant's claim for refund. However, given the nature of the dispute and the fact that all relevant facts remained disclosed to the revenue authorities, penalty is not justified.

Accordingly, tax demand is confirmed and refund claim rejected. Penalty is also set aside.

(Operative part of the order pronounced in the court at the end of hearing.)

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