

Hexacom (i) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-26-2003

Reported in : (2003)(156)ELT357TriDel

Judge : N T C.N.B., P Chacko

Appellant : Hexacom (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue raised in this appeal relates to refund of amount paid by the appellants by way of "service tax" on leased circuits. The appellant is a cellular operator who leases circuits from the DOT for the purpose of running the cellular services. In addition to lease charges, the appellants were charged with service tax also by the DOT for the periods 1998-99 and 1999-2000. Subsequently, on revision of lease charges retrospectively, DOT returned the excess amount collected towards lease charges; but did not return the service tax collected on the ground that those amounts have been deposited with service tax authorities. The appellants have, therefore, claimed the amount of service tax paid from the Central Excise Authorities. The lower authorities have rejected the claim on the ground that the refund of the service tax would amount to unjust enrichment.

2. We have perused the records and heard both sides. It is not in dispute that no service tax was leviable during the period in question.

Therefore, whatever payment was made did not relate to service tax at all. It was merely an erroneous collection by DOT and payment by the appellants. Therefore, provisions relating to refund of service tax, including those relating to unjust enrichment, cannot have any application to the return of the amount in question. It is further noted that provisions contained in Section 11D of the Central Excise Act have not been made applicable to service tax. Therefore, if any amounts are collected erroneously as representing service tax, which is not in force, there is no bar to the return of such amounts. The rejection of refund application was, therefore, not correct.

3. In the result, the appeal is allowed. The amount of service tax collected from the appellants during the periods 1998-99 and 1999-2000 shall be refunded to the appellants forthwith.

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