

Commissioner of Central Excise Vs. Hexacom India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-19-2005

Appellant : Commissioner of Central Excise

Respondent : Hexacom India Ltd.

Judgement :

1. M/s. Hexacom India Ltd. is a cellular operator in Rajasthan. It was liable to pay service tax in regard to service provided by it and had paid tax also. On 13.12.2002, Central Excise authorities issued notice to it alleging that an amount of about Rs. 1,17,000 had not been paid during the period October, 1997 to December, 1997. In adjudication, that allegation was upheld. The substance of the allegation was that the appellant had made certain excess payment of tax which it adjusted towards tax during the later period. The contention of the authorities was that such adjustment by the taxpayer is not permissible and refund should have been claimed. Thus, essentially, the respondent had paid full amount of tax. When the matter went before the Commissioner (Appeals), the Commissioner set aside the order on the ground that he demand had been made belatedly.

2. I have perused the records and heard both sides. As already noted the Commissioner (Appeals) set aside the demand on the basis of time-bar. The records show that the respondent had been filing return for the relevant period. The return specifically mentioned the adjustment. The details of adjustment were also given in a separate annexure. Thus, full facts of the adjustment made by the assessee remained disclosed contemporaneously. Therefore, the demand, if at all

was required to be raised during the normal time. The Commissioner (Appeals) correctly reached the finding that the demand was beyond time. There is no error in the order. The appeal is rejected.

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