

**Baba Motors Vs. C.C.E.**

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**SooperKanoon Citation :** [sooperkanoon.com/46440](http://sooperkanoon.com/46440)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-14-2007

**Reported in :** (2008)9STR505

**Judge :** A Wadhwa

**Appellant :** Baba Motors

**Respondent :** C.C.E.

**Judgement :**

1. The appellant is engaged in the business of service tax category "Authorized Service Station" and is liable to pay service tax during the period 2001-04. The appellants did not get themselves registered and did not pay service tax. During the course of investigations, the appellant revealed that they had provided services against free service coupons provided by M/s Bajaj Auto Limited and have collected/received the amount from M/s Bajaj Auto Ltd. The total amount disclosed by the appellant for the period 16.7.01 to 31.3.04 was to the tune of Rs. 4,65,290/- involving service tax of Rs. 28,322/-. The said amount was subsequently paid by the appellant along with interest of Rs. 5,275 vide TR-6 challan dated 29.4.04. They also get themselves registered with the Central Excise Department.

2. However, the revenue also made enquiries from M/s Bajaj Auto Ltd., Pune in respect of free service coupons. It was revealed that the amount credited to the appellant by M/s Bajaj Auto Ltd. on account of free service coupon was to the tune

of Rs. 8,44,055/-, as against the amount of Rs. 4.65 lakhs (approx.) disclosed by the appellant during the investigations. The appellants were summoned, who admitted but having received higher amount from M/s Bajaj Auto Ltd. and have also paid the remaining amount of tax of Rs. 19,841/- along with interest of Rs. 3,170/- vide TR-6 challan dated 27.4.05.

3. Proceedings were initiated against the appellant by way of issuance of show cause notice dated 28.5.05 proposing confirmation of tax and interest along with proposal to impose penalty under Section 75A, 76, 77 and 78 of the Finance Act, 1994. The said notice culminated into an order passed by the Assistant Commissioner confirming the tax amount along with interest. In addition, personal penalty of Rs. 100/- per day was imposed subject to maximum amount of Rs. 48,163/- under Section 76 of the Act. In addition, personal penalty of Rs. 96,326/- was imposed under Section 78 of the Act for willful, deliberate and conscious attempt to evade payment of service tax. Penalty of Rs. 500/- was imposed under Section 75A of the Act for not getting registered in time and penalty of Rs. 1000/- was imposed under Section 77 of the Act for the appellant's failure to file ST returns for the said period. Appeal against the above order did not succeed before the Commissioner (Appeals). Hence the present appeal.

4. I have heard Shri Hemant Bajaj, learned Advocate appearing for the appellant and Shri A.K. Rastogi, learned SDR appearing for the Revenue.

The appellants have not disputed the confirmation of service tax and interest. The challenge in the present appeal is only to imposition of penalty. I find that it is not disputed that during the course of investigation, the appellant had disclosed the value of the service tax as Rs. 4.65 lakhs (approx.). It was upon further investigation conducted by the Department at end of M/s Bajaj Auto Ltd. that the exact amount of service tax value received by the appellant was disclosed. This leads to the inevitable conclusion that the service tax value was consciously suppressed by the appellant to the extent of almost 50%. There was no justification or explanation to put forth by the appellant as to how and why the full amount of services provided against free coupons was not disclosed by them during the course of investigation. It may be observed here that such disclosure

was based upon the figures of account maintained by the appellant. There was no reason for the appellant to give wrong figures instead of disclosing the exact and correct amount. This fact is clearly indicative of the appellant mala fides. In my view, penalty to the extent of 100% stands rightly imposed by the lower authorities in terms of the provisions of Section 76 of the Finance Act. The same is accordingly confirmed along with confirmation of penalty of Rs. 500/- and Rs. 1000/- imposed under Section 75A and 77 of the Act. As regards the penalty of Rs. 96,326/- imposed under Section 78, I, keeping in view the facts and circumstances of the case, reduce the same to Rs. 25,000/- (rupees twenty five thousand only).

5. But for the above modification in the quantum of penalty as indicated above, the appeal is otherwise rejected.

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