**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.7156 OF 2019

Balaji Washing Company Pvt.Ltd.,
through its authorized Director .. Petitioner

Versus

The Union of India and ors. .. Respondents

Mr Swapnil S. Patil, Advocate for petitioner
Mr S.B. Deshpande, A.S.G. for respondent no.1
Mrs Kalpalata Patil -Bharaswadkar, Advocate for respondents no.2 and 3
Mr M.N. Navandar, Advocate for respondents no.4 to 6

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 20th February 2020

ORAL ORDER :

1. The petitioner seeks declaration that the demand notice dated 10.4.2019 issued by respondent no.3 is erroneous and the same be set aside.

2. Mr Patil, learned Counsel for petitioner submits that the petitioner had entered into contract of washing soiled linen of AC coaches with respondent no.6. The respondent paid the billed amount to the petitioner, but for the period from October 2013 to March 2014, April 2014 to September 2014, April 2015 to September 2015 did not pay the entire requisite billed amount including service tax. The respondent no.5 paid only the services charges less service tax to the petitioner. The respondent deducted the service tax @ 12.36% of the billed value and promised that they will deposit the same with Service Tax department.

3. Mrs Bharaswadkar, learned Counsel for respondents no.2 and 3 submits that the amount of service tax has not been paid to the department

by the petitioner. The petitioner is bound to pay the same. The petitioner declared service tax liability in its ST-3 return, but did not deposit the amount with the Central Government's Ministry (Ministry of Finance). After declaring the tax liability, the petitioner has failed to deposit the amount. It is the service provider who has to deposit the service tax and not the service recipient. Learned Counsel submits that the letter of respondents no.4 to 6 is not the tax payment.

4. Mr Navandar, learned Counsel for respondents no.4 to 6 submits that the respondents have deducted the service tax for the financial years 2013-2014, 2014-2015 and the said amount deducted from the bill of the petitioner was adjusted through books adjustment between Ministry of Railways and Ministry of Finance. Learned Counsel placed reliance on the letter issued by the Senior Divisional Financial Manager, Central Railway, Pune.

5. We have considered the submissions. On the last date, we had adjourned the matter so as to enable the learned Counsel for respondents no.2 and 3 to confirm the adjustment of the amount as contended. Learned Counsel, on instructions, submits that cross checking is very difficult in absence of the details.

6. It would appear that respondents no.4 and 5 and respondents no.2 and 3 are the two arms of the Government. If the contention of respondents no.4 and 5 is not accepted, it would tantamount to one arm of the Government fighting against the other arm.

7. Respondents no.4 and 5, on affidavit, have stated that necessary book adjustments have been made through current account with Service Tax department at Board's level and also the returns are filed to Service Tax department at appropriate time. The letter to that effect is also

issued. A letter issued by the Senior Divisional Financial Manager, Central Railway, Pune reads thus :

“CENTRAL RAILWAY

Sr.Divisional Finance Manager,
Central Railway, Pune

No.AC/PA/EXP-I/BILLS/2016-17
M/s Balaji Washing Co.Pvt. Ltd.,
Aurangabad

Sub : Deduction of service tax from CA no.PA/MECH/C-5/T-17

Ref : Central Excise, Customs & Service Tax Letter No.
F.No. VGN (30) ST/Gr-I/ST-3 CRUTINY/BALAJI/2016
Dtd. 03/05/2016

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With reference to your office letter no. cited above, it is informed that the Service tax collected on various activities from all the units and division of central railway are allocated to the respective head of allocation, at the end of each respective month for all units and division through Monthly Account Current (Balance Sheet), which is then submitted to Central Railway headquarters at Mumbai. The amount collected by Central Railway Headquarters, from all the units and division, towards service tax, are then consolidated and transferred by Central Railway (STC number AAACF8940RST001), to the Ministry of Finance, by book adjustment each month.

The Half yearly service tax returns for STC number AAACF8940RST001 are being filed by Name of the Assessee i.e. F.A. & C.A.O. Central Railway and the acknowledgment for the same i.e. Form No.ST-3, is obtained from Central Excise, Custom & Service Tax.

Senior Divisional Manager, Central Railway, Pune office during the financial year 2013-2014 and 2014-2015 had deducted service tax amount from M/s Balaji Washing Co.Pvt. Ltd., Aurangabad, instead of making payment of the same amount to the party. (Details are as per Annexure attached). This service tax amounts was adjusted through Book adjustment between Ministry of Railways and Ministry of Finance & the Half yearly returns statement was also filed, for the respective years (copy of ST-3 attached). All the amounts shown in the annexures are included in the return.

This is for your information as per your request.

Sr.DFM/Pune
A.D.F.M./Pune
C.Railway

8. Considering the aforesaid aspects, there is no reason to disbelieve respondents no.4 to 6.

9. In light of the above, the impugned demand notice is set aside.

10. Writ Petition is accordingly allowed. No costs.

(SHRIKANT D. KULKARNI, J.) **(S.V. GANGAPURWALA, J.)**

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