CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70492 of 2017

(Arising out of Order-in-Appeal No.126/ST/APPL/LKO/2017 dated 11/04/2017 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Encardio-rite Electronics Pvt. Ltd. .....Appellant

(A-7 Industrial Estate, Talkatora Road, Lucknow-226011)

VERSUS

Commissioner of Appeals, Central Excise

& Service Tax, Lucknow .....Respondent

(Commissioner of Appeals, Central Excise and

Service Tax, Lucknow)

WITH

Excise Appeal No.70897 of 2018

(Arising out of Order-in-Appeal No.72/ST/APPL/LKO/2018 dated 26/02/2018 passed by Commissioner (Audit), Central Goods & Service Tax and Central Excise, Lucknow)

M/s Encardio-rite Electronics Pvt. Ltd. .....Appellant

(A-7 Industrial Estate, Talkatora Road, Lucknow-226011)

VERSUS

Commissioner (Audit) Central Goods

& Service Tax and Central Excise, Lucknow .....Respondent

(Commissioner (Audit) Central Goods

& Service Tax and Central Excise, Lucknow)

WITH

Excise Appeal No.70898 of 2018

(Arising out of Order-in-Appeal No.96/ST/APPL/LKO/2018 dated 16/03/2018 passed by Commissioner (Audit), Central Goods & Service Tax and Central Excise, Lucknow)

M/s Encardio-rite Electronics Pvt. Ltd. .....Appellant

(A-7 Industrial Estate, Talkatora Road, Lucknow-226011)

VERSUS

Commissioner (Audit) Central Goods

& Service Tax and Central Excise, Lucknow .....Respondent

(Commissioner (Audit) Central Goods

& Service Tax and Central Excise, Lucknow)

APPEARANCE:

Shri Rahul Agarwal, Advocate for Appellant
Shri Anupam Kumar Triapthi, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71952-71954 / 2019

DATE OF HEARING: 25 November, 2019
DATE OF DECISION: 25 November, 2019

PER: ANIL G. SHAKKARWAR

Above stated 3(three) appeals are taken together for decision since they are involving a common issue. The appellants were sub-contractor for main contractor M/s Ircon International Ltd. & M/s Konkan Railway Corporation Ltd.and other principal contractors. In all the three appeals work undertaken by the appellant were in relation to laying of track for Indian Railways and the work associated was construction of dams etc for the said purpose of laying of track for Indian Railways. The entire activity was performed in the state of Jammu & Kashmir. It appeared to Revenue that since the registered office of appellant and registered office of main contractor for whom the appellants were sub-contractor are in taxable territory, therefore, the services rendered and consumed in the state of Jammu & Kashmir are taxable in view of Rule 6 of the Taxation of Services (Provided from outside and received in India) Rules 2006 as well as Rule 8 of the Place of Provision of Service Rules, 2012. The learned counsel for the appellant has submitted that in the year 2007 audit had raised an objection for restricting cenvat credit to 20% in view of the fact that the appellants were providing taxable services as well as services which are not taxable in view of Section 64 of the Finance Act, 1994 in respect of services provided in the state of Jammu & Kashmir. The amount required to be paid in view of said objection was paid by the appellant and for subsequent period the appellant availed only 20% of eligible cenvat credit in view of such provision when separate account was not maintained for input services utilized in providing taxable services and services rendered in the State of Jammu & Kashmir. The learned counsel for the appellant had submitted that the said view was reversed by the Revenue and above stated show cause notices were issued through which demands were raised for recovery of service tax in respect of services provided and consumed in the State of Jammu & Kashmir.

2. After hearing both the sides, we note that provisions of Rule cannot override provisions of Section provided in the Act. There is no dispute that services were provided and consumed in the State of Jammu & Kashmir. We also note that Section 64 of Finance Act, 1994 clearly lays down that provisions of Chapter V of Finance Act, 1994 which deals with service tax are not applicable in the State of Jammu & Kashmir. We, therefore, hold that the stand taken by Revenue is not sustainable. We, therefore, set aside all the impugned orders and allow all the three appeals.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Nihal