

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No. ST/71132/2018-ST[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUSS-001-APPL-1996-17-18 dated 28/03/2018 passed by Commissioner, Central Goods & Service Tax (Appeals), Noida)

M/s Suman Auto

Appellant

Vs.

Commissioner, Central Excise & Service Tax, Noida

Respondent

Appearance:

Shri Kapil Vaish (CA)

for Appellant

Shri Sandeep Kumar Singh (Deputy Commissioner) AR

for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 31/12/2018

Date of Decision : 31/12/2018

FINAL ORDER NO 72948 / 2018

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Learned CA Shri Kapil Vaish on behalf of the Appellant and Learned AR Shri Sandeep Kumar Singh, Deputy Commissioner on behalf of the Revenue I note that the appellant is Authorized Service Station. They availed Cenvat Credit of Rs.21,68,881/- on the basis of invoices issued to them by Service provider. It appeared to Revenue that service provider were not registered and, therefore, appellant was not eligible to take Cenvat Credit as availed by them. Therefore,

proceedings were initiated which culminated into filing the present appeal. I note that the issue is no more *res integra* in view of the Final Order of this Tribunal in the case of Adecco Flexione Work Force Solution Ltd. vs. Commissioner of Central Excise, Customs and Service Tax, Bangalore-LTU reported at 2015 (40) S.T.R. 288 (Tri. Bang.). Finding of this Tribunal at Para 4 in the said Final Order is as follows:-

“4. As assessee who has paid the Service Tax to the service provider, is entitled to avail the credit of the same, without finding whether such Service Tax paid by him to the service provider stands further deposited by him to the exchequer. It is neither possible nor practicable for any service recipient to verify the fact of payment of Service Tax by the service provider. If the Revenue is of the view that the service provider has not deposited the Service Tax collected by him from his customers, the remedy lies at the end of the service provider and not at the end of the service recipient. Apart from that, I find that in the present case, the Revenue has not made any verifications at the end of the service provider to find out as to whether the Service Tax has actually been deposited by them or not. There is neither any allegation much less any evidence to that effect.

In view of finding by this Tribunal that an assessee who has paid service tax to service provider is entitled to avail the credit of the same without finding whether such service tax paid by him to the service provider stands further deposited to the exchequer.

2. I, therefore, do not find any merit in the impugned order.

3. In above terms impugned order is set aside and appeal is allowed.

(Dictated and Pronounced in Court)

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

Ankit