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

**APPEAL No.ST/70705/2016-CU[DB]**

(Arising out of Order-in-Appeal No.194-ST/APPL-ALLD/LKO/2016 dated 08/03/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

**M/s Indian Potash Ltd.** **Appellant**

Vs.

**Commissioner, Central Excise, Allahabad** **Respondent**

Appearance:

Shri Kapil Vaish (C.A.) for Appellant
Shri Rajeev Ranjan, (Additional Commissioner (AR), for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing/ Decision : 16/01/2019

FINAL ORDER NO. **70145 / 2019**

**Per: Anil G. Shakkarwar,**

After hearing both the sides duly represented by learned Chartered Accountant, Shri Kapil Vaish on behalf of the appellants and learned A.R. Shri Rajeev Ranjan on behalf of the Revenue, we note that the issue involved herein is availment of abatement of 75% of value for the purpose of payment of service tax under GTA service as recipient of service. The learned Commissioner (Appeals) has not taken cognizance of the certificates submitted by the appellant before him that the service provider has not availed the benefit of Cenvat Credit for benefits of Notification No.12/2003-ST dated 20.06.2003. We note that condition for availment of abatement is that service provider has not availed cenvat credit. The learned Commissioner (Appeals) has not looked into the certificate issued by the service provider that they have not availed the Cenvat Credit because the same was not produced before the Original Authority. We note that Tribunal has taken a constant view that service provider is not required to pay service tax. Hence, question of availment of cenvat credit does not arise. The said view is supported by various decisions of this Tribunal. One such decision is in the case of M/s Venkateshwara Distributors (P) Ltd. V/s Commissioner of Central Excise, Delhi-I reported at 2013 (31) S.T.R. 469 (Tri.-Del.). By following the said decision we set aside the impugned order and allow the appeal.

(Pronounced & Dictated in Court)

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

Sd/-
**(Archana Wadhwa)**
**Member (Judicial)**

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