

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

E/00622/2009

[arising out of Order-in-Appeal No.50/2009 (M-II) , dated 27.08.2009
passed by the Commissioner of Central Excise (Appeals), Chennai]

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-II

APPELLANT

Versus

M/s. MITSUBA SICAL INDIA LTD.

RESPONDENT

Appearance:

For the Appellant

Shri S. Govindarajan, AC (AR),

For the Respondent

Ms. Radhika Chandrasekhar, Adv.

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Member (Judicial)

Hon'ble Shri Madhu Mohan Damodhar , Member (Technical)

Date of hearing/decision

21-09-2017

FINAL ORDER NO. 42367/2017

Per Bench:

The issue in dispute in this appeal concerns the alleged wrong availment of credit of service tax paid on outward transport charged beyond the 'place of removal'. Original authority has confirmed demand of an amount of Rs.31,07,549/- being input credit on such outward transportation, along with interest liability thereon and also equal penalty. In appeal, Commissioner vide impugned order, dated 27.08.2009 following the Tribunal's decision in *India Cements Ltd., Vs Commissioner of Central Excise, Tirupati* reported in 2007 (216) E.L.T.91 (Tri.-Bang.) setting aside the order of impugned authority and allowed the appeal. Aggrieved, department has filed this appeal.



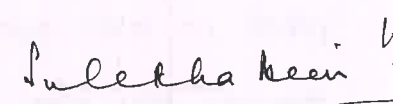
2. On 21.09.2017, when the matter came up for hearing, Ld. advocate for the respondent Ms. Radhika Chandraeskar submits that the matter is no longer *res integra* and has been settled by a number of High Court judgments, for example, *M/s. Indo-Japan Lighting Pvt. Ltd. Vs Commissioner* reported in 2013 (288) E.L.T.A23 (Mad.). and *Commissioner of Central Excise, Chennai-II Vs M/s. Borg Warner Morse Tec Murugappa Pvt. Ltd. & Anr.*, reported in 2015-TIOL-831-HC-Mad-CX by following the decision of the Hon'ble High Court of Karnataka in the case of *ABB Ltd.*, has held that the manufacturer is eligible for the input service credit of outward transportation of final products from the 'place of removal.'

3. For the department Ld. A.R. Shri S. Govindarajan, fairly concedes the fact of the judgments cited by learned advocate.

4. On going through the facts, we find that the submissions of the learned advocate to be correct. The eligibility of credit on outward transportation, ^{has been decided} in appellant's favour by slew of judgments of higher appellate forums. In view thereof, no merit is found in the appeal filed by the department, for which reason, it is dismissed.

(Dictated and pronounced in open court)


(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)


(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
2-2017

Income Tax Appellate Tribunal
Chennai

प्रमाणित प्रतिलिपि / Certified True Copy
27/9
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क सत्यापन एवं सेवा कर
अपील अधिकारी (CESTAT)
चेन्नई / CHENNAI