**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'be 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 availement 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.

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2. On 21.09.2017, when the matter came up for hearing, Ld. advocate for the respondent Ms. Radhika Chandraeskhar 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)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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

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