IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: E/852 & 853/2010

[Arising out of Order-in-Original No: Belapur/10-11/Belapur III/R-III/COMMR/SLM/2009-10 dated 12th February 2010 passed by the Commissioner of Central Excise, Belapur.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Hare Krishna Boxes Pvt Ltd
Ajay S Agarwal … ***Appellants***

versus

Commissioner of Central Excise
Belapur ***…Respondent***

Appearance:

Ms Padmvati Patil, Advocate for appellants

Shri VK Agarwal, Additional Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:	**12/07/2018**
Date of decision:	**06/11/2018**

ORDER NO: A/ 87862-87863/2018

Per: C J Mathew

It is the submission of Learned Counsel for the appellant, M/s Hare Krishna Boxes Pvt Ltd, that the issue disputed by them in their appeals against order-in-original no. Belapur/10-11/Belapur III/R-III/COMMR/SLM/2009-10 dated 12th February 2010 of Commissioner of Central Excise, Belapur stands settled in their favour by the decision of the Tribunal in *Hare Krishna Boxes Pvt Ltd v. Commissioner of Central Excise, Belapur [2011 (267) ELT 525 (Tri-Mumbai)]* which set aside the confirmed demand for the earlier period. While conceding that this is so, it was argued by Learned Authorised Representative that the appeal of Revenue against an identical decision, in identical circumstances, of the Tribunal in *Jai Jawala Processors v. Commissioner of Central Excise, Rohtak [2018 (360) ELT 94 (Tri-Del)]*, which had also referred to in the decision *supra*, had been admitted by the Hon'ble Supreme Court. On specific query, it was ascertained that no stay had been granted.

2. Appellant is a manufacturer of 'printed corrugated boxes' and, for the period from August 2007 to December 2008 covered by two show cause notices, had been excluding the value of supplies made to merchant exporters from the value of clearances and the consequent entitlement to exemption below threshold prescribed in notification no. 8/2003-CE dated 1st March 2003 was objected to, and rejected, by the adjudicating authority. The confirmation of demand of ₹ 1,06,03,949 under section 11A of Central Excise Act, 1944, along with interest thereon under section 11AB of Central Excise Act, 1944, and the imposition of penalties under rule 25 and rule 26 of Central Excise Rules, 2002 is under challenge here.

3. In the light of the decision of the Tribunal for an earlier period that the clearances to merchant exporters, which itself is not disputed, is to be excluded from the computation of total clearances, the impugned order does not sustain.

4. Accordingly, the appeals are allowed.

(Pronounced in Court on 06/11/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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