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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/254 /2011 - EX[DB] WITH E/S/296/2011-EX Date **20/10/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S CADBURY INDIA LTD.
PLOT NO. 25, MALANPUR INDUSTRIAL AREA,
VILLAGE GURIKHA, TEHSIL GOHAD, DISTT. BHIND
(M.P.)
477117

M/S CADBURY INDIA LTD. Appellant

Vs

C.C.E. INDORE **STAY ORDER NO. 1127/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.913** **2011** **EX[DB]** dated 18-10-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.K.J.JOHN&CO
428, M.C.SETALVAD LAWYERS CHAMBERS,SUPREME COURT OF INDIA,BHAGWAN DASS ROAD, N DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:17.10.2011

Stay Application No.296 of 2011 in Central Excise Appeal No.254 of 2011

Arising out of the order in appeal No.IND/335/2010 dated 19.10.2010 passed by the Commissioner, Central Excise (Appeals), Indore.

For Approval and Signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 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

Cadbury India Limited .. Appellants

Vs.

C.C.E., Indore .... Respondent

Appearance:

Shri M. P. Baxi, Advocate for the applicant/appellant
Shri R.K. Verma, DR for the respondents

Coram: Hon'ble Ms. Jyoti Balasundaram, Vice President
Hon'ble Mr. Rakesh Kumar, Technical Member

STAY Oral order No. 1127/2011-EX
FINAL Oral Order No. 913/2011-EX

Per Ms. Jyoti Balasundaram:

For the reasons recorded below, we waive pre-deposit of Rs.11,64,959/- together with interest and penalty of the same amount plus an additional penalty of Rs.4 lakhs and proceed to decide the appeal at this stage with the consent of both the sides as the order records that no evidence was filed by the appellants in support of their claim. The Department is of the view that it is clear from the order that no evidence has been filed by the assessee on the invoices which support the stand that the waste on which duty has been demanded is in the nature of packing material which was neve used in the manufacture of final product and general industrial waste and credit was not taken on either kind of waste.

2. We find that the Commissioner (Appeals) has held in para 5.5 of the impugned order that the assessee has failed to establish that the credit was not pertaining to cenvatable capital goods on which cenvat credit appeared to be taken because they failed to produce any substantial documents/records, that may be in support of the contention of the appellant. Attention was also drawn by the learned Counsel for the appellants to the written submission filed by them on 2.09.2010 (the impugned order has been passed on 20.10.2010) to which they have endorsed copies of invoices to establish their case that the nature of the waste cleared without payment of duty was packing material waste and general industrial waste. These documents have not been considered by the lower appellate authority and are required to be considered for the purpose of determining whether assessees are liable to pay the duty. We, therefore, set aside the impugned order and remit the case to the adjudicating authority for fresh decision in the light of the evidence produced by the assessee that the waste on which duty has been demanded is in the nature

of packing waste and general industrial waste on which cenvat credit was not taken. Fresh order shall be passed after extending a reasonable opportunity of hearing to the appellants.

3. The appeal is thus allowed by way of remand.

(Jyoti Balasumdaram)
Vice President

(Rakesh Kumar)
Technical Member

scd/