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| केन्द्रीय कर आयुक्त (अपील) | |  |
| O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, | | |
| केन्द्रीय कर शुल्क भवन | | 7 th Floor, Central Excise Building, |
| सातवीं मंजिल, पॉलिटेक्निक के पास, | | Near Polytechnic, |
| आम्बावाडी, अहमदाबाद-380015 | | Ambavadi, Ahmedabad-380015 |
| 079-26305065 | | टेलिफैक्स: 079-26305136 |

क फाइल संख्या : File No : **V2(ST)0265/A-II/2016-17** 19021 404022

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-125-17-18**

दिनांक Date : **27-10-2017** जारी करने की तारीख Date of Issue **22-11-17**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **STC/Ref/112/Vistaprint/KMM/AC/Div-III/16-17** Dated **15.11.2016** Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Cimpress Technologies Pvt Ltd
Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs, or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of



service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश, देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i). amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1). In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, where penalty alone is in dispute.



ORDER IN APPEAL

M/s. Cimpress Technologies Pvt. Ltd, (Formerly known as Vistaprint Technologies Private Limited.) GF 01-04, 104, 201-204, 301-304, Commerce House V, Corporate Road, Prahladnagar, Ahmedabad-380051 (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number STC/Ref/112/vistaprint/K.M.Mohadikar/AC/Div-III/2016-17 dated 18.11.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax Div-III, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*); Appellant holding ST registration No. AAMCS 1800 MSD002.

2. The facts of the case, in brief, are that the appellants filed refund claim under Notification 27/2012- CE (NT) dated 18.06.2012 read with Rule 5 of CCR, 2004 for refund of accumulated and unutilized credit of Rs. 19,88,508/- on 30.06.2016 for period July-2015 to September-2015. Refund claim of Rs. 4,40,909/- as input service tax credit of Works Contract service was rejected vide impugned OIO on grounds that the entire CENVAT credit as credit pertaining to civil work and therefore ineligible input service.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 27.02.2017 on the following grounds;

- I. The impugned order is passed on the basis of assumptions, inferences, surmises and conjectures.
- II. Entire amount of CENVAT Credit claimed is pertaining to Civil Work is grossly incorrect.
- III. They had obtained works contract services from DTZ International Property Advisory Pvt. Ltd. ("Vendor") for its office premises which inter-alia included various activities such as interior works, furnishings, security cables etc. The said services were essential for the purpose of creating a good, comfortable and a modernized working environment in the office.

4. Personal hearing in the case was granted on 13.09.2017. Shri Madhav kalani and Shri Hitesh Mundra, both CA, appeared before me and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. Refund claim on Works contract service is rejected on ground that it is not input service for providing service in terms of rule 2(l) of CCR, 2004. Notification No. 3/2011-CE(NT) dated March 1, 2011, inter alia, deleted the phrase 'setting up' and "activities related to business" from the inclusive part of the definition.

7.1 *Post facto April 1, 2011, "(l) "input service" means any service, -*

.....and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises."

Hence, broadly, services relating to "setting up" of premises of provider of output service and "activities related to business" is not be eligible for Cenvat credit with effect from April-1, 2011. However services relating to modernization



renovation/repairs of premises of provider of output service is eligible for Cenvat credit. Credits on input services which were in the nature of business expenses are excluded. I find that works contract service used is in nature of business activity and business expense for setting up new premises. Moreover works contract service has no nexus with the out-put service therefore credit is not admissible.

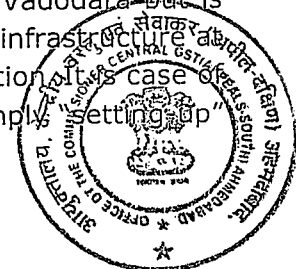
7.2 Omission of word "Setting up" from definition clearly indicated that Government intention is to not allow credit of services utilized in initial establishing of business of service provider or manufacturer. Once the business is already setup, the services can be utilized to modernize, repair and renovation. Set up means (a) to create the needed condition for something (b) to establish or to create something (c) to put equipment in particular place so that one can work. Here one should understand the difference between phrase "set up" (verb) and "setup" (noun). The verb "set up" is preceded by "to", like "to set up" which means its activity (verb) done on some object (noun). Here the activity of initial "setting up" i.e furnishing, installing furnishers, office movable infrastructure, electrification, civil activity, net working etc is done in premises. Once the office is setup, it can later on or after some time be modernized, repaired or renovated. New definition in 2011 has deleted only word "setting up" and other words "modernization", "repair" and "renovation" were still there post 2011. Appellant purposely names its "setting up" activity carried out as "modernization" to avail the benefit of service used in creating new establishment.

7.3 I have perused the invoices of the works contractor, DTZ International Property advisor Pvt. Ltd, Bangaluru. Wherein it is categorically stated that Works contract service is used in the "setting up of new premises" for starting new unit in Ahmedabad, at "Commārce House-5, Prahladnagar, Ahmedabad. Centralized service tax registration of this newly set-up premises (Vistaprint Technogies, Ahmedabad) are taken on 11.08.2015 but before that business activity, including of export activity, was undertaken from Vistaprint Technologies, Vadodara. Works contract expense is incurred for setting up premises in Ahmedabad. Expense is of Rs. 12,33,33,960/- and it includes internal civil works, Electric works, Air conditioning, Modular workstation, security system, Networking, Chairs, UPS, Carpet, displays/soft furnishing, DG sets , consulting fees and Miscellaneous expense.

7.4 Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property taken on lease is neither 'service' or 'goods' as referred to above, input credit of service tax paid to works contractor for "setting up" new business premises cannot be taken. Works contract service it has no nexus and absolutely no relationship with the out-put service. Works contract service undertaken by appellant is not covered either under main definition part or under inclusive part of definition under rule 2(l) of CCR, 2004. Moreover construction part i.e civil part of contract is specifically excluded from the definition.

7.5 Appellant contention is that works contract service is used for modernization of office is not tenable as modernization can be undertaken where there is existing infrastructure and furnishing. Modernization refers to a model of a progressive transition from a 'pre-modern' or 'traditional' to a 'modern' infrastructure and furnishing. In the instance case when leased premises itself was devoid of internal infrastructure and furnishing, there is no question of modernizing office premises. Switching over in a existing premises from traditional infrastructure to high-tech mordent infrastructure is a called modernization. Instance case is addition of new separate premises (i.e premises of Ahmedabad) of existing unit of Vadodara but is not a case of modernization of existing unit of Vadodara. New office infrastructure Ahmedabad added may be modern but it is not a case of modernization. It is case of initial setting up of new premises at Ahmedabad. I find that it is simply

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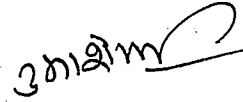


of new premises and said "setting-up" of new premises cannot be equated as modernization of office.

7.6 Appellant during their defense at the time of adjudication has relied upon Judgment in case of Red Hat India Pvt. Ltd. [2016 (44) S.T.R. 451 (Tri. - Mumbai)] wherein it is held that Works Contract Service used for construction service is only excluded and further it is held that Works Contract Service used for "maintenance of office" equipment does not fall under exclusion category in definition of input service. Said judgment is regarding provisions of works contract service to existing set-up premises of service provider. This judgment is of no use to appellant because, in instance case, works contract service received by appellant, is not used for "maintenance of office" but it is used for setting up of new office and "setting up" work has been excluded from definition of input from April, 2011. Not only "construction service" but all the services used in setting up of office premises of service provider or setting up of factory is excluded from the input service definition.

7.7 In view of forgoing discussion I hold that Works contract service credit is correctly denied in impugned OIO and consequently the refund of said credit is rightly rejected. I reject the appeal of the appellants and up-hold the OIO.


8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(K.H.Singhal)
SUPERINTENDENT (APPEAL),
केन्द्रीय कर, AHMEDABAD.

To,

M/s. Cimpres Technologies Pvt. Ltd,
104, 201-204, 301-304,
Commerce House 5, Corporate Road,
Prahlanagar, Ahmedabad

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Principal Commissioner, Central Tax, Ahmedabad(South)
- (3) The Assistant Commissioner, Central Tax Division VII(Satellite), Ahmedabad(South)
- (4) The Asstt. Commissioner (System), Central Tax HQ, Ahmedabad (South)
- (5) Guard file
- (6) P.A. file.

