
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, 7 th Floor, GST Building, Near Polytechnic, सान्नी मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 टेलीफैक्स : 079 - 26305136
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/179&180/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-343&344-2017-18
दिनांक Date : 22-02-2018 जारी करने की तारीख Date of Issue 17/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS08/Ref-54/PNG17-18 दिनांक: 17/11/2017,
CGST/WS08/Ref-51/PNG17-18 दिनांक: 15/11/2017 issued by Assistant Commissioner, Central
Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Cimpres Technologies Pvt. Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

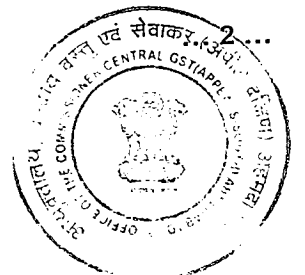
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का नुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

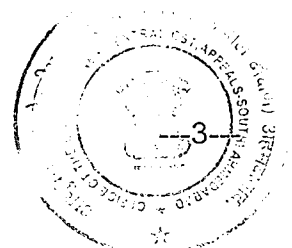
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

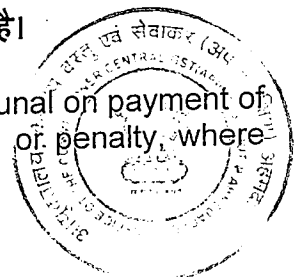
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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, or penalty, where penalty alone is in dispute."

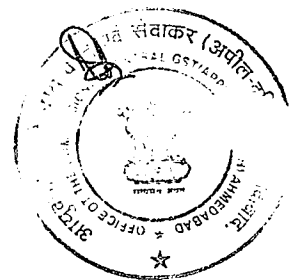


ORDER IN APPEAL

M/s. Cimpress Technologies Pvt. Ltd, GF 01-04, 104, 201-204, 301-304, Commerce House 5, Corporate Road, Prahladnagar, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original numbers CGST/WS08/Ref-51/PNG/17-18 dated 15.11.2017 and CGST/WS08/Ref-54/PNG/17-18 dated 17.11.2017. (*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 holds ST registration No. AAMCS 1800 MSD002 w.e.f. 11.08.2015 as centralized registration at above premises. Prior to this they were holding single registration in same name but at nr. Akota stadium, Vadodara. Both the impugned orders involve similar issues except the time so I am taking them both together for decision by this single order.

2. The facts of the case, in brief, are that the appellants filed refund claims 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. 15,86,375/- on 19.10.2015 for period Oct-2014 to Dec.-2014. Appellant had submitted original, revised and re-revised return ST-3 returns copy for period Oct-2014 to March-2015. Refund claim was rejected vide OIO No. STC/Ref/150/HCV/Vista/Div-III/15-16 dtd. 17.02.2016 impugned OIO on following grounds-

- a) Original return is filed on 24.04.2015 wherein the cenvat credit availed during the period Oct. 2014 to Dec. 2014 is shown as 'NIL';
- b) The said ST-3 return is revised by the said appellants on 23.07.2015 and an amount of Rs. 24,82,409/- is shown as the cenvat credit availed during the quarter Oct-2014 to Dec.-2014 by taking recourse to Rule 7 of the Service Tax Rules, 1994 (the STR, 1994 for brevity);
- c) The said ST-3 return filed by the said appellants on 23.07.2015 is again revised on 15.10.2015 wherein a new value of the cenvat credit availed during the concerned period is shown to be Rs. 15,86,375/-;
- d) The said appellants did not submit the basic statutory records for ascertaining the quantum of cenvat credit for the purpose of refund and instead submitted a ledger of cenvat credit the authenticity of which has never been disclosed to the department. They filed a manual revised return after one year for which there is no provision in the service tax law;

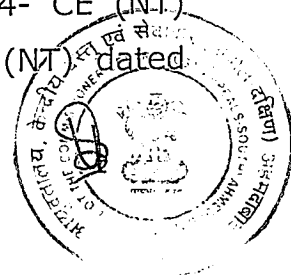


- e) The CENVAT credit availed prior to registration of un-registered premises is not allowed. They were neither registered as Input Service Distributor nor they were centrally registered during the material time;
- f) The claim was barred by time.

2.1 Being aggrieved by the said OIO dtd. 17.02.2016, the appellants preferred an appeal before the Commissioner (Appeals-II), Central Excise, Ahmedabad. The appeal of the appellants was decided vide OIA No. AHM-SVTAX-000-APP-200-16-17 dtd. 23.12.2016. The Commissioner (Appeals-II) ordered that the appeal was rejected on the ground that the ST-3 returns had been revised many times leading to conclusion that the appellants had not maintained credit accounts properly. The appeal on the grounds of BRC and availment of credit on unregistered premises was accepted and the case was remanded to the adjudicating authority as per the directions given in OIA dtd. 23.12.2016. On remand, the adjudicating authority, vide the impugned order dtd. 17.11.2017, rejected the refund claim of Rs. 15,86,375/- as per provisions of the Notification No. 27/2012-CE(N.T.) dtd. 18.06.2012.

2.2 The facts of the case for the second appeal in the impugned OIO dtd. 15.11.2017, in brief, are that the appellants filed refund claims 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. 35,32,359/- on 02.08.2017 for period January-2015 to March-2015 along with relevant documents. Refund claim was rejected vide the impugned OIO dtd. 31.03.2016 on following grounds:

- a) Does not fall in parri-passu with the terms and conditions of the notification No. 27/2012- CE (NT) dated 18.06.2012;
- b) It was violative of provisions of Cenvat Credit Rules, 2004 in availing and utilizing cenvat credit on ineligible input services like outdoor catering, construction and Restaurant Services;
- c) It was violative of provisions of rule 7 & 7B of Service Tax Rules read with Rule 9 (9) of the Cenvat Credit Rules, 2004 by not declaring/misdeclaring the amount of cenvat credit earned and availed during filing of self assessed return and by wrong showing/revising the same in the revised return and again correcting the same by filing manual revised return without any legal authority;
- d) It violated the provisions of the notification No. 21/2014- CE (NT) dated 11.07.2014 and the notification No. 6/2012- CE (NT) dated 01.03.2015;
- e) The claim was barred by time;

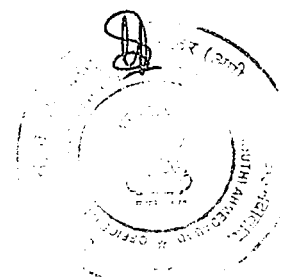


- f) The CENVAT credit was availed on un-registered premises was not allowed;
- g) The appellants were habitual in committing similar mistakes in regular manner and it was the third time that the refund is having glaring mistakes and flagrant violations of the rules.

2.3 Being aggrieved by the said OIO dtd. 15.11.2017, the appellants preferred an appeal before the Commissioner (Appeals-II), Central Excise, Ahmedabad. The appeal of the appellants was decided vide OIA No. AHM-SVTAX-000-APP-178-16-17 dtd. 22.11.2016 by partial remand. The Commissioner (Appeals-II) ordered that the appeal was rejected on the ground that the ST-3 returns had been revised many times leading to conclusion that the appellants had not maintained credit accounts properly. The appeals on the grounds of BRC and availment of credit on unregistered premises was accepted and the case was remanded to the adjudicating authority as per the directions given in OIA dtd. 22.11.2016. On remand, the adjudicating authority, vide the impugned order dtd. 15.11.2017, rejected the refund claim of Rs. 35,32,359/- as per provisions of the Notification No. 27/2012-CE(N.T.) dtd. 18.06.2012.

4. Being aggrieved with the impugned orders, the appellants have preferred these appeals on 05.02.2018 before the Commissioner (Appeals-II) wherein it is contended that-

- a) They were not provided an opportunity of being heard and they have revised the return once and thereafter filed an intimation for actual amount of cenvat credit;
- b) The appeal filed against the OIA dtd. 22.11.2016 before the CESTAT has been decided in their favour vide order No. A/13578/2017 dtd. 20.11.2017 in which it has been held that it is the right of the appellants to revise the return in case there is a mistake and there is no bar on appellants to revise the returns;
- c) There is no requirement in the said Notification that for claiming refund of cenvat credit, the same must be disclosed in the service tax returns filed;
- d) The cenvat credit cannot be restricted to the amount availed and as shown on the service tax returns for a quarter as held in the case of WNS Global Services Pvt. Ltd. Vs. CCE, Pune-III (order no. A/2860-2861/15/SMB dtd. 06.05.2015);
- e) They have submitted certified copies of all the invoices/challans amounting to Rs. 143 lakhs on the basis of which cenvat credit was availed;

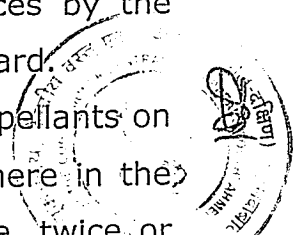


- f) Refund should be granted on the basis of CENVAT a/c and not on the basis of closing balance in returns. In support of argument, judgment in case of Serco Global Services Pvt. Ltd [2015(39) STR 892 (Tri. Del.)] is cited.
- g) In case of Broadcom India Research Pvt. Ltd [2016(42) STR 79 (Tri. Bang.)] ground of rejecting the refund claim was CENVAT credit shown in ST-3 does not tally with amount of refund claim. The relevant extract of the judgment is reproduced as - *"The next ground is that Cenvat credit shown in the ST-3 returns does not tally with the amount claimed in the refund claims. In my opinion, the refund claim is not based on ST-3 returns and ST-3 return is nothing but a report of transactions that have taken place over a period covered by the returns. On the ground that the figures in ST-3 returns were not correct or there was a substantial difference, refund claim cannot be rejected. For the purpose of consideration of refund claim, the relevant documents on the basis of which credit was taken, nature of service and its nexus and utilization of the service for rendering output service are relevant and merely because there was some mistake in the ST-3 returns, substantive right of assessee for refund cannot be rejected. Therefore, I do not consider it necessary to consider the issue as to whether figures in ST-3 returns tallied with the amounts claimed in the refund claims or not."*
- h) They had prepared and maintained a cenvat credit register disclosing all the relevant information as prescribed under Rule 9 (6) of the CCR;
- i) They had always disclosed the correct figures in their revised returns as they had a bonafide belief that claiming refund of an amount lower than the cenvat credit disclosed in the service tax returns.

5. Personal hearing in both the cases was held on 07.02.2018 in which Ms. Khushboo Kundalia and Shri Hitesh, both CA, appeared before me and reiterated the grounds of appeal. They submitted that all invoices have been verified and the refund claim was filed for lower amount than that reflected in the ST returns. They further submitted that the Tribunal has allowed their appeal for earlier period.

6. 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.

7. The appellants have submitted a copy of the CESTAT's order No. A/13578/2017 dtd. 20.11.2017 in the appeal filed by the appellants against the OIA No. AHM-SVTAX-000-APP-178-16-17 dtd. 22.11.2016 issued on 23.01.2017. I find that the CESTAT in its order has allowed cenvat credit on Real Estate Agent Service, Outdoor catering service, Air travel services, restaurant services, short term accommodation services etc by holding that the said services have direct nexus for providing output services by the appellants. I also hold accordingly and allow the appeal in this regard. I also find that the CESTAT has allowed the appeal filed by the appellants on the issue of revision of their ST-3 returns by holding that nowhere in the Finance Act, 1994, it is stated that return is to be revised once, twice or



thrice. If there is mistake, it is right of the appellant to revise the return and there is no such bar on the appellant to revise the return and they can revise the returns several times. In view of this order by the CESTAT, I also hold accordingly and allow the appeal in this regard.

8. The CESTAT has further ordered that the adjudicating authority has to examine the certificates provided by the banks for co-relating the exports made by the appellants and payments realized thereof. I hold that Bank certificate certifying receipt of payment of export invoice will suffice the requirement instead of regular BRC but subject to verification by refund sanctioning authority. I set aside the impugned OIO as far as it relates to rejection of claim on BRC issue. It is just and proper in the interest of justice to remand back the case to original refund sanctioning authority to allow claims after due verification of bank certificate and export invoice remittance covered under above claims. The adjudicating authority may directly call details from the concerned banks regarding the certificates. In the event of proper verification and matching of all the figures claimed by the appellants and involved in both these impugned orders are tallied, the appeals pertaining to such claims shall stand allowed.

9. In view of above, Appeals filed by the appellants are allowed by way of remand and the impugned orders are set aside.

10. The appeals filed by the appellant stand disposed off in above terms.

अपीलकर्ता द्वारा दर्ज की गयी अपीलों का निपटारा उपरोक्त तरीके से किया जाता है !

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक: 22/2/2018

सत्यापित

र.प.अ.द.
(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s. Vistaprint Technologies Pvt. Ltd,
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Corporate Road,
Prahlanagar,
Ahmedabad

Copy to:

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Asth. Commissioner, CGST, Div.-VIII, Ahmedabad (South),
- (4) The Dy./Asth. Commissioner (Systems), CGST, Ahmedabad (South),
- (5) Guard File,
- (6) P.A. File.

