रजिस्टर्ड डाक ए.डी. द्वारा दूरभाष : 26305065

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज़ भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद– 380015.

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क फाइल संख्या : File No : V2(ST)06/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-192-16-17

दिनाँक Date : 23.12.2016 जारी करने की तारीख Date of Issue 13/2/17

श्री उमा शंकर, आयुक्त (अपील–II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग ___________ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं ___________ दिनाँक : ___________ से सृजित

Arising out of Order-in-Original No STC/Ref/122/HCV/Vista/Div-III/15-16 Dated 29.01.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Vistaprint 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 :-

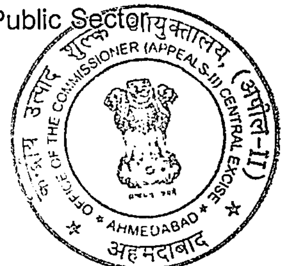
वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल 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 विरूद्ध 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है –

(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 होगे।

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,

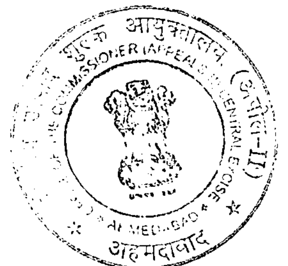
Under Central Excise and Service Tax, "Duty demanded" shall include:

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



ORDER IN APPEAL

M/s. Vistaprint Technologies Pvt. Ltd, 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 number STC/Ref/122/HCV/Vista/Div-III/2015-16 dated 29.01.2016 *(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 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.

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. 92,20,118/- on 30.09.2015 for period July-2014 to Sept.-2014. Appellant has submitted following original and one revised return ST-3 returns copy for period April-2014 to Sept.-2014 wherein credit availed during July-2014 to Sept.-2014 is as below.

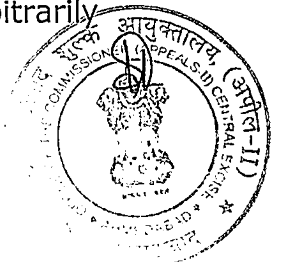
July-2014 to Sept.-2014	Filed on due date 22.10.2014	Manual revised ST-3 on 15.10.2015
Opening Balance		
Credit availed	NIL	92,20,118
Closing Balance		

3. Refund claim was rejected vide impugned OIO on following grounds-

I. CENVAT credit accumulated during July-2014 to Sept.-2014 since not filed correctly in time the same is required to be taken "NIL" on the basis of original ST-3. Revised manual ST-3 filed is rejected on ground that it is not filed within prescribed 90 days limit u/r 7 of service tax rules. Therefore no refund is admissible as no credit taken during relevant quarter.

II. Credit is availed after six month; therefore credit itself is not eligible in terms of Rule 9(1) of CCR, 2004.

III. Hypothetical amount of credit 92,20,118/- availed shown in revised ST-3 dated 15.10.2015, though revised beyond prescribed 90 days u/r 7 of service tax rules, 1994,the said amount can not be considered for allowing refund as said amount formed imaginatively or arbitrarily



lacking any factual reality. Said amount is not supported by any documentary evidence and it is not in consonance with refund amount.

IV. Manual ST-3 return filed on 15.10.2015 is not acceptable as there is no provision to file return manually and after prescribed 90 days limit.

V. Original registration was not centralized and as such the CENVAT credit availed prior to registration of un-registered premises is not allowed. In support of argument judgment in case of Market Creators Limited [2014(3) ECS (185) (Tri.-Ahd.)] is cited.

VI. Bank realization certificates required as per para 3(d) of Noti. No. 27/2012-EX (NT) is not submitted hence refund is not admissible.

VII. Works contract service credit (73,46,196/-), out door catering service credit and restaurant service credit is not admissible as said services are not "input services".

VIII. FIRC for relevant claim period were received on 26.04.2014, 24.07.2014 and 15.09.2014, therefore claim should have been filed on 14.09.2015. claim is filed on 30.09.2015 i.e. beyond one year, therefore whole claim is hit by limitation of time.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 08.04.2016 before the Commissioner (Appeals-II) wherein it is contended that-

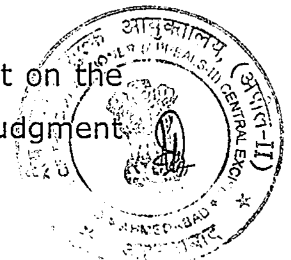
I. Condition /pre-requisite which is paramount importance for allowing credit is that services should have been received for export and the appellant should have suffered the service tax.

II. As per rule 7(1) of service tax rules, 1994 read with section 65(12) of Finance Act-1994, only person liable to service tax is required to get registered and file ST-3. Appellant being 100% exporter of service is not required to get registered and required to file ST-3 periodically.

III. Claim is rejected merely on ground that CENVAT credit availed is not reflected in ST-3. Substantial benefit should not be denied on procedural and technical grounds.

IV. There is no requirement in said notification and application form-A under said notification that CENVAT credit disclosed in ST-3 only should be allowed as refund. In support of argument judgment in case of WNS Global Services Pvt. Ltd Vs. CCE- Pune III[Order No. A/2860-2861/15/SMB dated 06.05.2015] is cited.

V. 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.

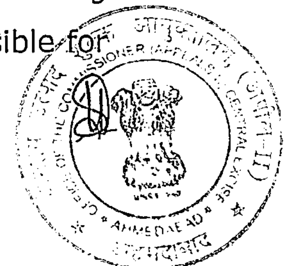
VI. In case of Broadcom India Research Pvt. Ltd [2016(42) STR 79 (Tri. Bang.)] ground of rejecting the refund claim was CENVAT credit shown in ST-3 does not tally with amount of refund claim. The relevant extract of the judgment is reproduced as - *"The next ground is that Cenvat credit shown in the 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."*

VII. Registration was amended on 12.06.2015 to obtain centralized registration(added all premises for which CENVAT credit is availed) and all the credits were shown in revised return filed.

VIII. Input services in respect of which CENVAT credit is rejected on ground that the address mentioned on voices is not covered under registration certificate. There is no requirement in rue that registration to be taken for availing credit. As per rule 4(7) CCR credit is allowed on invoices received. Said service is utilized for export therefore credit is admissible. In case of JP Morgan Private ltd. dtd. 2.2.2016 it is held that no restriction exist in availing credit before grant of registration. In support of argument, cited judgment in case of Imagination Technologies India Pvt. Ltd [2011-TIOL-719-CESTAT-MUM)] is cited wherein it is held that nowhere it is mentioned in the law that the credit is not available prior to registration.

IX. They have already submitted FIRC received from bank evidencing receipt of consideration towards export of services.. Certificate from Bank declaring the receipt of foreign exchange against the specified invoices raised has been filed. One-to-one co-relation of bank certificate with invoices copy can be verified by department. In case of Apotex Research Pvt. Ltd [2014-TIOL-1836-CESTAT-BANG] it is held that , what is required to established by exporter is that, in respect of export invoices consideration if foreign currency has been received.

X. Works contract service is used for renovation and modernization of existing premises which is used for export business. Out door catering service , Works contract service, restaurant service are admissible for credit as used in furtherance of business and exports.



XI. SCN issued never proposed to reject the CENVAT credit availed in respect of unregistered issue and out door catering service.

5. Personal hearing in the case was granted on 16.11.2016. Shri Manoj Chandak and Shri Mitesh Jain, both CA, appeared before me and reiterated the grounds of appeal. They submitted additional submission wherein it is stated that-

I. Works contract service is used in modernization of premises wherefrom export of out put service is undertaken. They submitted judgment in case of M/s Red Hat India Pvt. Ltd and M/s Alliance Global Services IT India Pvt. Ltd. in support of their contention.

II. Outdoor catering service is used in export of out put. They submitted judgment in case of M/s Hindustan Coca cola Beverages Pvt. Ltd and M/s Cargill India Pvt. Ltd. [2015(38) STR 587(Tri. Bang.) in support of their contention.

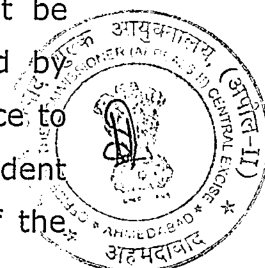
III. Restaurant service is used in export of out put. They stated in previous quarter refund is given by the adjudicating authority.

IV. Non inclusion of one of the branch in the registration certificate is merely technical lapse for which benefits of claim can not be denied. They submitted judgment in case of M/s Bharat Sanchar Nigam Ltd. [2009(14)STR 699 (Tri. Chennai.) And M/s UM Cables Ltd. [2013-TIOL 386 HC MUM CX) in support of their contention.

DISUSSION AND FINDINGS

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. Argument of appellant is based on decision of Tribunals that refund is not to be granted on returns. However, I find that appellant's submission is not correct because in those decisions the amount/figures were not under doubt. However in the present case the refund amounts as well as accumulated cenvat credit amount have been revised many times. It should be noted that the ST-3 returns are statutory document and can not be changed at will. On the contrary the credit A/c register maintained by service provider is now a non-statutory document and giving precedence to non-statutory document to statutory document will not be a prudent practice. This aspect has not been examined and discussed in any of the



citation submitted by the appellant. Honorable Tribunal has also not considered and examined under what authority figures mentioned in statutory prescribed returns should be discarded when C.Ex. Rules /Service Tax Rules/Act do not prescribe any investigation or cross examination/verification before sanctioning refund. The pitfall and danger of accepting private records over statutory return has not been considered and discussed in any of the citation, which will lead to very dangerous and revenue risky situation. The rules are prescribed in a sequence which has considered every aspect for the provisions of notification along with Central Excise Rules and other related statutory provisions and have tried to take care of while formatting in a logical sequence. If any of this sequence is broken then it is open to mis-utilisation and fraught with risk

7.1 Rule 9(5) and 9(6) of CCR, 2004, states that manufacturing of final products or the provider of output services shall maintain proper records for the receipt and consumption of the input services in which relevant information regarding the value, tax paid, CENVAT Credit taken and utilized. Rule 9(2) provides that Assistant Commissioner may allow the credit of CENVAT if he is satisfied that the goods and services have been duly received and accounted for in the books of accounts of the receiver of service.

7.2 For the same period 7/2014 to 9/2014, **credit availed figures have been revised four times** which proves that appellant is not maintaining credit account properly and there is scope of manipulation and changes.

i. In another instance, pertaining other refund OIO dated 19.02.2016 for period 10/2014 to 12/2014, **credit availed figures are re-revised four times.**
ii. In another one more instance pertaining other refund OIO dated 31.03.2016 for period 01/15 to 3/2015 **credit availed figures are re-revised three times.**

It was a fit case for denying refund under credit rule 9(2) read with 9(5) and 9(6) of CCR, 2004 for not proper maintenance of Account itself. Frequent revising and re-revising the credit figures in ST-3 (without authority) by such a huge service exporter creates serious doubts and is not acceptable. Adjudicating authority has overlooked this severe lapse but has rejected refund on some other grounds.

8. It is concluded in impugned OIO that Out door catering service and restaurant service are not used up in providing out-put service and said

services are not "input service" as per definition given in CCR, 2004. It is contended by appellant that If said services are not taken, then it will have adverse effect on export business to which I am unable to agree as no narration as to how this services are used up for out put services made. I find that said two service received by appellant are in nature of business activity and business expense and has no nexus with the out-put service therefore credit is not admissible. These services may have been received but not necessary for core export activity, therefore they are not covered under rule 2(l)(i) and its inclusive clause definition. Appellant have produced various judgments as stated above in respect of above two services in their appeal memo and during the course of hearing. Said judgments produced are not squarely applicable to appellant as out put service is different and said input services has no nexus even at a remote end. Phrase "activities related to business" is not be eligible for Cenvat credit with effect from April 1, 2011 as said phrase is deleted from input service definition by Notification No. 3/2011-CE(NT) w.e.f. 01.04.2011. I hold that credit in respect of said two services being "activities related to business" and being expenses in the nature of business is not eligible for Cenvat credit and consequently refund thereof is not admissible. Demand on out door service confirmed was not included in SCN. I find that adjudicating authority has traveled beyond SCN as far as out door service is considered.

9. Refund claim on Works contract service credit of Rs. 73,46,196/-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. 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 has no nexus with the out-put service therefore credit is not admissible.

9.1. 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 bee 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.

9.2 I have perused the works contract agreement dated 01.05.2014 entered between Vistaprint Technologies, Vadodara and DTZ International Property advisor Pvt. Ltd, Bangaluru. Agreement is for designing, procurement and construction for leased premises at "Commerce House-5, office No. 201, 202, 203, 301,302,303 & 304, Prahladnagar, Ahmedabad. Works contract service is used in the "setting up of new premises" for starting new unit in 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 Ahmedbad. 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

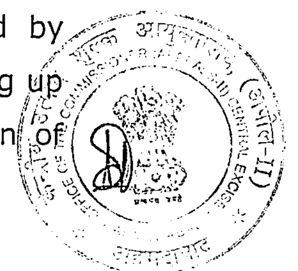
9.3 Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property taken on lease is neither 'service' or 'goods' as referred to above, input credit of service tax paid to works contractor for "setting up" new business premises cannot be taken. Works contract service has no nexus and

absolutely no relationship with the out-put service. Works contract service undertaken by appellant is not covered under main 2(l)(i) definition part nor under inclusive part of definition. Moreover construction part i.e civil part of contract is specifically excluded is from the definition.

9.4 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 at Ahmedabad added may be modern but it is not a case of modernization. It is case of initial setting up of new premises at Ahmedbad. I find that it is simply "setting-up" of new premises and said "setting-up" of new premises can not be equated as modernization of office.

9.5 Moreover appellant has argued that works contracts service undertaken for repair and renovation is eligible for input service in terms of CBEC Circular No. 943/04/2011-CX dated 29.04.2011. I would like make a point that "setting-up" is altogether different then "repair and renovation" as "repair and renovation" can be undertaken only for existing infrastructure and furnishing. Since the premises were newly furnished with office infrastructure, the benefit of said circular can not be extended to the appellant.

9.6 Appellant 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



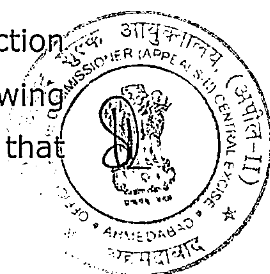
input from April, 2011. Not only "construction service" but all the services used in setting up of office premises of service provider or setting up of factory is excluded from the input service definition.

9.7 Appellant has also relied upon Judgment in case of Alliance Global Services IT India (P) Ltd. [2016 (44) S.T.R. 113 (Tri. - Hyd] wherein it is held works contract service credit is available on "repair and renovation" of premises. Again this judgment is of no use to appellant because, in instance case, because works contract service received by appellant is not used for "repair and renovation" of existing premises.

9.8 In view of forgoing discussion I hold that Works contract service credit) is correctly denied in impugned OIO and consequently the refund of it is not grantable.

10. One of the conditions for allowing refund is that BRC should have been received. Appellant has produced FIRC wherein receipt of foreign currency is shown. From FIRC it can not be established that said receipt is in respect of export invoice No.01/2014-15 dated 30.09.2014 or services in respect of which claim is filed. At para 3(d) of Noti. No. 27/2012-EX (NT) it is mentioned that "The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported". Bank realization certificate (BRC) is must for claim. Appellant has produced CESTAT judgments in the case of Apotex Research Pvt. Ltd [2014-TIOL-1836-CESTAT-BANG] wherein at point No. 7 of judgment ruling is given about foreign remittance. It is stated that.... "A certificate from the bank certifying that the amount in the invoice has been received specifically with reference to invoice has to be made available. What is required to be established by an exporter is that in respect of invoice raised by him, consideration in foreign currency has been raised". Such certificate may suffice the requirement of para 3(d) of Noti. No. 27/2012-EX (NT). Appellant has not produced bank certificate certifying to effect that foreign remittance in respect of said export invoice is received. In absence of BRC or at least such bank certificate certifying receipt of payment of said export invoice dated 30.09.2014, refund can not be granted. I uphold the impugned OIO as far as it relates to rejection of claim of BRC issue.

11. Now I come to issue regarding invoices bearing address of un-registered premises. Adjudicating authority has not raised any objection other then un-registered premises issue in respect of invoices showing address of un-registered premises. It is not concluded in impugned OIO that



services are not received and not utilized in service exported. I hold that credit refund is admissible to appellant in respect of such un-registered premises. Judgments in case of M/s Bharat Sanchar Nigam Ltd. [2009(14)STR 699 (Tri. Chennai.). And M/s UM Cables Ltd. [2013-TIOL 386 HC MUM CX) cited by appellant is squarely applicable to issue. Adjudicating authority has relied upon judgments in case of M/s Market Creators Limited [2014(3) ECS (185) (Tri. Ahmedabad) is regarding ISD therefore it is not applicable for centralized registration issue. In view of foregoing discussion credit availment of unregistered premises invoice issue is decided in favor of appellant.

12. Regarding availment of credit beyond six month, adjudicating authority has never disputed the receipt and usages of services in export of goods, therefore substantial benefit can not be denied. My view is supported by following judgments-

I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat - [2013] 38 taxmann.com 298 (Ahmadabad - CESTAT)
III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437
V. CST Delhi vs. Convergys India Private Limited 2009 –TIOL -888-CESTAT –DEL-2009 (16) STR 198 (TRI. – DEL)
VI. CST Delhi vs. Keane Worldzen India Pvt. Ltd. 2008 – TIOL -496 – CESTAT –DEL: 2008 (10) STR 471 (Tri. – Del)

In view of foregoing discussion credit availment beyond six months issue is decided in favor of appellant.

13. Para 2(a) of Notification 27/2012-CE (NT) mandates to file only one claim for quarter, therefore for export turnover of services of a relevant quarter the refund can not be filed in between of relevant quarter. Exporter can file claim earliest only at the end of quarter. Moreover appellant is not allowed to file refund before quarter is completed, and in that case, the relevant date for computing 1 year for the purpose of Section 11B shall be from end of quarter. Therefore I hold that end of quarter is relevant date (i.e date from which one year period is reckoned) to file the claim. My view is supported by CESTAT judgment delivered with respect to Notification 27/2012-CE (NT) in the case of CCE V/s Navistar International Pvt. Ltd.-(2016)-TIOL-1055-CESTAT-MUM where

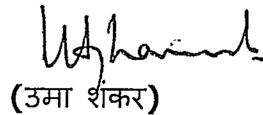
in it is held that an exporter can file refund claim within one year from the last date of relevant quarter. The last date in instance Claim for period July-2014 to September-2014 would be 30.09.2015. Appellant has filed claim on 30.09.2015, therefore claim is not hit by limitation of Section 11B of CEA, 1944.

14 In view of foregoing discussion credit availment of unregistered premises invoice issue, credit availment beyond six months issue and limitation under 11B issue is decided in favor of appellant. Appeal is rejected in respect of BRC or Bank certificate issue, out door catering service credit, restaurant service issue, and credit of works contract issue, consequently whole claim is rejected.

15. In view of above, Appeal filed by the appellant is rejected.

16. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

(R.R. PATEL)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,

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

Copy to:

1) The Chief Commissioner, Central Excise, Ahmedabad.
2) The Commissioner, Service Tax ,Ahmedabad-.
3) The Additional Commissioner, Service Tax, Ahmedabad
4) The Asst. Commissioner, Service Tax Div-III, APM mall, Satellite, Ahmedabad.
5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
6) Guard File.
7) P.A. File.