

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

क फाइल संख्या : File No : V2(ST)0154/A-II/2016-17 / 195-200
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-197-16-17
दिनांक Date : 23.12.2016 जारी करने की तारीख Date of Issue 14/02/17

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
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No STC/Ref/61/Vista / KMM/AC/Div III.16-17 Dated 25.07.2016 Issued
by Assistant Commr STC Div III, Service Tax, Ahmedabad

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

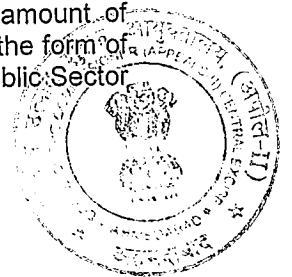
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल
हॉस्पिटल 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 भेजी 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 (सीस्टेट) 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 रुपए 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 अर्जाएँ एवं अपील को लागू नहीं होंगे।

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,

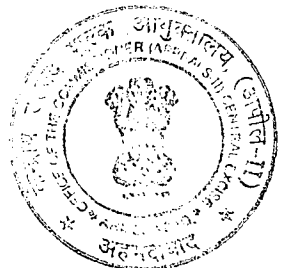
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



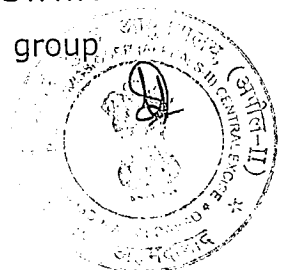
ORDER IN APPEAL

M/s. Cimpress 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/61/K.M.Mohadikar/AC/Div-III/2016-17 dated 25.07.2016 (*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 Centralised registration in Name of Vistaprint Technology Ahmedabad and prior to that they were holding single registration in name of Vistaprint Technology 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. 23,25,071/- on 31.03.2016 for period April-2015 to June-2015. Refund claim of Rs. 12,24,525 as input service tax credit of Works Contract service (Rs. 9,41,741/-), General Insurance Service (Rs.2,28,984) and Event management service (Rs. 53,760/-) was rejected vide impugned OIO on grounds that these services are not utilized in core area of export.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 04.10.2016 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. Works contract service is used for renovation and modernization of existing premises which is used for export business. Only construction service used in civil structure is excluded in exclusion clause of input service definition. Event management service and Group insurance services are admissible for credit as services used in furtherance of business and exports. Insurance invoice is in name of appellant and payment is made by appellant. Appellant relied upon CESTATA judgment dated 29.03.2016 in case of FIEM industries Ltd. for group insurance issue.



4. 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 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. For event management service they submitted judgment in case of Bank of Baroda [2014-TIOL-2357-CESTATE-MUM]

DISUSSION AND FINDINGS

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.

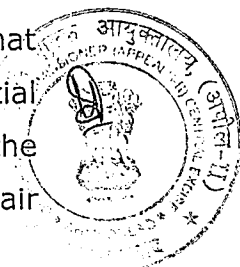
6. Refund claim on Works contract service is rejected on ground that is not input service for providing service in terms of rule 2(I) of CCR, 2004. Notification No. 3/2011-CE(NT) dated March 1, 2011, inter alia, deleted the phrase 'setting up' and "activities related to business" from the inclusive part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

7.1 Post facto April 1, 2011, "(I) "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.

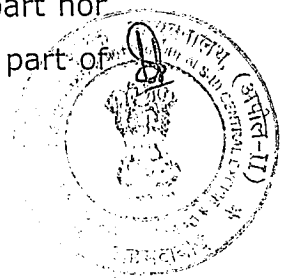
7.2 Omission of word "Setting up" from definition clearly indicated that Government intention is to not allow credit of services utilized in initial establishing of business of service provider or manufacturer. Once the business is already setup, the services can be utilized to modernize, repair



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 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) is 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

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 has no nexus and absolutely no relationship with the out-put service. Works contract service undertaken by appellant is not covered under main 2(I)(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.



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 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.

7.6 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.

7.7 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.

7.8 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.

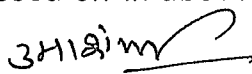
7.9 In view of forgoing discussion I hold that Works contract service credit is correctly denied in impugned OIO and consequently the refund of said credit is not grantable.

8. Now I take up the issue regarding admissibility of credit on Insurance service and event management service. Appellant has produced the accounting before adjudicating authority and has never objected that said service is not received and not used up in export of out-put service and has not suffered tax. Only objection raised is that said services are not "input service" as per definition given in CCR, 2004. Said service are used up in providing out-put service. If said services are not taken, then it will have adverse effect on export business. Said services has nexus with the out-put services therefore they are covered under rule 2(l)(i) and its inclusive clause definition. Appellant have produced various judgments as stated above in respect of above services in their appeal memo and during the course of hearing. Said judgments are squarely applicable to appellant. Adjudicating authority has never disputed the receipt and usages of services in export of goods, therefore substantial benefit can not be denied merely because said services has no direct nexus with the out-put services. I hold that credit in respect of said two services is admissible and consequently refund thereof.

9. In view of above, Appeal filed by the appellant is partly rejected in respect of works contract services (Rs. 9,41,741/-) and partly allowed in respect of Event management services (Rs. 53,760/-) and insurance services (Rs.2,28,984).

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. 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. Cimpres Technologies Pvt. Ltd,
104, 201-204, 301-304,
Commerce House 5,
Corporate Road,
Prahlanagar,
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.

