

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AIEPR1584QIZH
Legal Name of Applicant	Colo Color (Prop. Hiral Pinkal Rambhia)
Registered Address/ Address provided while obtaining user id	1st Floor, Dadar Departmental Stores, MC Jawle Marg, Dadar West, Mumbai - 400028
Details of application	GST-ARA, Application No. 132 Dated 08.03.2019
Concerned officer	Asstt. Commissioner of CGST & Central Excise, Division - VI, Mumbai Central.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Applicant is a retail chain of digital labs and studios.
Issue/s on which advance ruling required	(i) Classification of goods and/or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s Colo Color (Prop. Hiral Pinkal Rambhia), seeking an advance ruling in respect of the following question.

1) Whether the activity of merely printing or reproducing the content given by the photographers / retail customers on pen drive, CD, memory card or any other storage media will be classifiable under Service Code 998912 or 998386?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

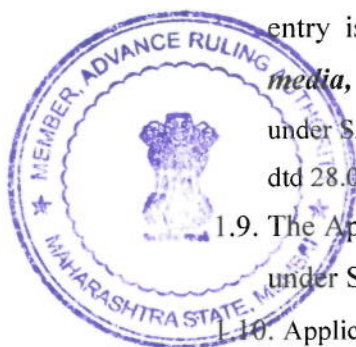
The submissions, as reproduced verbatim, could be seen thus-

“Statement of relevant facts having a bearing on the question(s) raised :

- 1.1. The Applicant is a multifaceted retail, wholesale and institutional Sales Company that offers a range of products, solutions, services and equipment related to digital printing.
- 1.2. The Applicant operates a retail chain of 19 digital labs and studios in the brand name of “Colo Photo Shop”, with 15 dealer outlets and one distribution hub in Mumbai.
- 1.3. The Applicant is associated to more than 25,000 photographers, who are in the profession of photography and having their studios, color labs or they are freelancer photographers.
- 1.4. The Photographers & retail customers shoot images through Digital Cameras & provide the photos to Applicant in Pen Drive, CD, Memory Card, or in any other storage media.
- 1.5. Applicant provides the photographers with printing services in its high equipped digital labs. Applicants prints the photographs in various sizes as per the requirement of the photographers.
- 1.6. The Applicant also provides the printing services to retail customers who provide the content on the pen drive, CD, memory card or any other storage media.
- 1.7. Applicant provides following printing solutions to the photographers & retail customers:
 - a. Wide Format Printing
 - b. Output on photographic paper in various sizes
 - c. Output on off-set paper size up to 13”x19”
- 1.8. Applicant submits that there are two competing entries for classification of the Activity of printing services carried out by the Applicant. The Applicant states that the first relevant entry is under SAC Code 998912 as “*Printing and reproduction services of recorded media, on a fee or contract basis*”. Applicant states that the rate of CGST for services falling under SAC Code 9989 is prescribed under Entry 27 of Sch. to Notification No. 11/2017 C.T. (Rate) dtd 28.06.2017 as amended by Notification No. 20/2017 C.T. (Rate) dated 22.08.2017.
- 1.9. The Applicant submits that other relevant SAC for the classification of the above activity is under SAC 998386 as “*Photographic and videographic processing services*”.
- 1.10. Applicant States that the services falling under SAC 9983 are liable to CGST at 9% under Entry 21 of Schedule to Notification No. 11/2017-Central Taxes (Rate) – 28.06.2017 .

3a. Statement containing the applicant's interpretation of law and or facts as the case may be, in respect of the aforesaid question(s) :

1. Applicant submits that by plain reading of the description of competing entries, the aforesaid activity of printing services provided by the Applicant falls under SAC 998912:
 - 1.1. Applicant submits that in the present case, the Applicant is providing services of printing of content from a recorded media. Therefore, on a plain reading of the two competing entries it is clear that it is covered under 998912 being reproduction services of a recorded media.
 - 1.2. In the above activity, the applicant is not engaged in providing any photographic or videographic processing services. The Applicant is merely printing or reproducing the content given by the photographers and retail customers on a recorded media. The



processing is done by the professionals themselves. The Applicant merely prints it. Hence, the applicant cannot be said to be providing services as per SAC 998386.

2. The Applicant states on a technical grounds also mere printing of the photographs cannot be termed as photographic processing. Something more than mere printing is required to be called as photographic processing. The Applicant is not carrying out any processing in the present case. Thus, the said activity will be covered under SAC 998912 only.
3. The Applicant craves leave to add, alter or amend the grounds at the time of hearing .

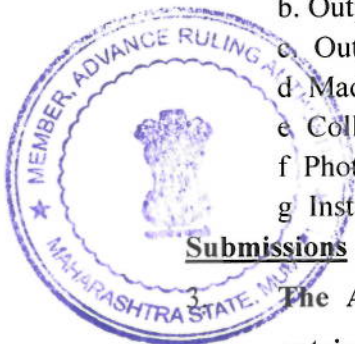
Additional submissions on 07.05.2019.

- 1.4. The Photographers shoot images through Digital Cameras, edit it at their end only & provide the photos to Applicant on Pen Drive, CD, Memory Card, or in any other storage media.
- 1.5 Applicant provides the photographers with printing services in its high equipped digital labs. Applicant has invested in the advanced digital lab machines such as Nortisu QSS 3202. Applicants prints the photographs in various sizes as per the requirement of the photographers in its digital lab machine
- 1.6 The Applicant also provides the printing services to retail customers who provide the content on the pen drive, CD, memory card or any other storage **media**.
- 1.7. Applicant provides following printing solutions to the photographers & retail customers:
 - a. Wide Format Printing
 - b. Output on photographic paper in various sizes
 - c. Output on off-set paper size up to 136x19"
 - d. Made to order Albums
 - e. Collage
 - f. Photo Book Album
 - g. Instant Passport & Visa Photos

Submissions

The Applicant submits that by plain reading of the description of competing entries, the aforesaid activity of printing services of a recorded media provided by the Applicant falls under SAC 998912:

- 3.1. The Applicant submits that in the present case, the Applicant is providing the services of printing of content from a recorded media. The photographers provide the edited photos or albums to be printed in the advanced digital lab machines of the Applicant.
- 3.2. The Applicant states that it does not carry out any processing other than printing on such photographs provided on recorded media. In other words, the Applicant does not carry out any editing or other processes on the photographs provided by the clients.
- 3.3. Thus, looking at the actual activity of the applicant, the applicant is merely printing the content provided on recorded media. Therefore, on a plain reading of the two competing



entries it is clear that the above activity is covered under 998912 being printing services of a recorded media

3.4. Applicant does not provide any photographic or videographic processing services. Applicant is merely printing or reproducing the content given by the photographers from a recorded media to a paper. Hence, the applicant cannot be said to be providing services as per SAC 998386.

4. **The facts of the present case are directly covered by the Advance Ruling in the case of Photo Products Company Ltd. in the State of West Bengal dated 30.05.2018.**

4.1. The Applicant submits that the case of the applicant is directly covered by the West Bengal AAR in the case of Photo Products Ltd. dated 30.05.2018. In the said AAR on the identical facts, the Hon'ble WB AAR has held that printing of photographs from the content provided on a media by the customers is classifiable under 998912.

4.2. Applicant submits that the said AAR of Hon'ble WB Authority is directly applicable in the facts of the present case. Thus, the said should be followed. Alternatively, it may lead to dis-parity & discrimination. The same transaction in different States will be given a different meaning & liable to GST at different rates. This is not permissible in a law. Hence, applicant's activity is classifiable under the SAC 998912 liable to GST at 12%.

Clarification issued by the CBIC vide Circular No. 84/03/2019-GST dated 01.01.2019 is not applicable in the present case.

5.1. The Applicant submits that, the CBIC vide its Circular dated 01.01.2019 has clarified on the activity of service of printing of pictures covered under SAC 998386. In the said Circular, after relying on the Explanatory Notes to the Scheme of Classification of Services, the CBIC has clarified that colour printing of images from film or digital media is covered under SAC 998386 liable to GST @ 18%

5.2. The Applicant submits that the said Clarification of CBIC is not applicable in the facts of the present case. The said clarification is given in respect of the services falling under SAC 998386, i.e. where a photo studio has provided the services of the photographic processing and colour printing of the images.

5.3. In the facts of present case the clarification given by CBIC shall be applicable at the hands of the photographer, When the photographer gives the printed album to its customer, the same will fall under 998386. However, the said classification will not apply when the photographer gets the album printed from the digital tab printer such as the Applicant on a contract basis.

5.4. In the present case, from the plain reading of the two competing entries, the services provided by the Applicant falls under SAC 998912. Thus, the above clarification is not applicable in the facts of the present case,



5.5. Assuming, without accepting the clarification of CBIC is applicable in the facts of the present case, then in such case the Applicant submits that the said Clarification is issued contrary to law and without considering the binding effect of the WB AAR. Thus, the said Clarification cannot be applied in the facts of the present case.

6. CBIC has erred in relying on the Explanatory Notes to the Scheme of Classification of Services for classifying the above activity in the clarification.

6.1. The Applicant submits that, Explanation (ii) to Notification No. 11/2017-CT(R) provides as follows:

Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter", "Section" and "Heading" in the annexed scheme of classification of services (Annexure).

6.2. Thus, for interpreting the Chapter, Section or Heading of various Services referred to in the Notfn No. 11/2017, one may refer to the annexed scheme of classification of services.

6.3. As per the Annexure - Scheme of Classification of Services, the following two entries are extracted below for ready reference:

S. No.	Chapter, Heading or Group	Section, (Tariff)	Service Code	Service Description
348	Group 99838			Photography and videography and their processing services 998381
349			998381	Portrait photography services
350			998382	Advertising and related photography services
351			998383	Event Photography and event videography services
352			998384	Specialty photography services
353			998385	Restoration and retouching services of photography
354			998386	Photographic and videographic processing services
355			998387	Other photography and videography and their processing services nowhere else classified
547	Group 99891			Publishing, printing and reproduction services
548			998911	Publishing, on a fee or contract basis
549			998912	Printing and reproduction services of recorded media, on a fee or contract basis

6.4. Applicant submits that from a plain understanding of the Applicant, the present activity carried out by the Applicant qualifies as printing services. The said activity is provided by the advanced digital lab printing machines employed by the Applicant.

6.5. Applicant does not provide the photographic processing services. The intention of the parties is to get the printing done through the advanced lab printing machines and not photographic processing.

6.6. Thus, from a plain reading of the competing entries in the Scheme of Classification of Service, the said activity will fall under SAC 998912.



- 6.7. Applicant submits that the CBIC has relied on the certain Explanatory Notes to the Scheme of Classification. The said Explanatory Notes do not form part of the Scheme of Classification of Service, neither any explanation is provided either in the Notification or under the Annexure to refer to Explanatory Notes in case of any ambiguity in classifying the activity of service.
- 6.8. Thus, reliance placed by the CBIC on the Explanatory Notes is without any basis and beyond the scope of legislation. The said Explanatory Notes do not form part of the Annexure - Scheme of Classification of Service. The said Explanatory cannot be reference point of interpreting the tariff items in a Statue,
- 6.9. Without prejudice, it is a settled law that in case where there is no ambiguity in the tariff entry, reference to explanatory notes or placing reliance on them is not necessary.(**Palwa Chemical's case (2000) 124 ÉLT 244 (Tri. Cal).**)
- 6.10. The Applicant further submits that, assuming the Explanatory Notes is applicable in the present case, however there are contrary explanations in the tariff entry and the explanatory notes. The Hon'ble Supreme Court in the case of **Collector of Central Excise, Baroda Vs. L.M.P. Precision Engineering Co. Ltd. (2004) 9 SCC 703**, has held that in case of a contradiction in the Explanatory Notes and Tariff Entry, the express words in the tariff entry shall prevail over the contrary words in Explanatory Notes.
- 6.11. Thus, in the present case also the express words in the Tariff 998912 shall prevail over the Explanatory Notes for the said tariff.

7. **Without prejudice to the above, where two entries of the Schedule command equal merit, one which is favorable to the assessee will prevail.**

Without prejudice to the above, the Applicant submits that both the tariff 998912 and 998386 have equal merit for consideration, the view which is favourable to the Applicant must be adopted.

- 7.2. The Applicant relies on the decision of Hon'ble Supreme Court in the case of **CCEx, Calcutta Vs. Calcutta Springs Ltd. - (2007) 15 SCC 89 (SC)** where in the Hon'ble Apex Court held that where a particular goods is capable of falling under two entries than the one which his favourable to the assessee needs to be adopted.”

03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

“M/s. Colo Color, (hereinafter referred to as the applicant) has filed above said application under Section 98 of the CGST Act, 2017 read with Rule 104(1) of the CGST Rules, 2017 seeking advance ruling on.

- i) Whether the activity of merely printing or reproducing the content given by the photographers/ retail customers on pen drive, CD, memory card or any other storage media will be classifiable under Service Code 998912 or 998386?
2. The Applicant was registered under erstwhile Service Tax regime (Finance Act, 1994) having Service Tax Registration No. AIEPR1584QSD001 for providing Photographic Services. At present the applicant is registered under the Central Goods and Service Tax Act, 2017 with GSTIN 27AIEPR1584Q1ZH for providing the same services.
3. The applicant receives **images and photos** in Pen Drive, CD, Memory Card or in any other storage Media from Photographers/ Retail Customers.
4. The applicant provides the photographers/ retail customers printing services in its highly equipped digital labs. The applicant prints the photographs in various sizes as per the requirement of the customers.
5. The relevant extracts of the **explanatory note to the scheme of the classification of services** related to the matter in Advance Ruling application are reproduced below

i) 998386 Photographic and videographic processing services

This service code includes developing of negatives and the printing of pictures for others according to customer specifications such as enlargement of negatives or slides, black and white processing; colour printing of images from film or digital media; slide and negative duplicates, reprints, etc.; developing of film for both amateur photographers and commercial clients; preparing of photographic slides; copying of films; converting of photographs and films to other media.

This service code does not include:

- motion picture film processing and post-production services, cf. 999613.

ii) 998912 Printing and reproduction services of recorded media, on a fee or contract basis

This service code includes newspaper and book printing services, printing services directly onto plastic, glass, metal, wood or ceramics and other printing services n.e.c. This also includes services as

- i. those related to bookbinding, folding, assembling, stitching, gluing, collating, basting, adhesive-binding, trimming, gold stamping services;*
- ii. Other book finishing services such as folding, cutting, stamping, drilling, punching, perforating, embossing, sticking, gluing and laminating;*
- iii. services of processing matrices, films, bromide prints or electronic data in order to generate original texts to be reproduced (composition, photocomposition, plate-making);*
- iv. services combining text and image techniques for making a reproducible original; production services of other reprographic products such as overhead projection foils, sketches, layouts, dummies;*
- v. preparation services of digital data, e.g., enhancement, selection, linkage of digital data stored on EDP data carriers; other graphic service activities related to printing; rebinding services.*

This service code also includes

- i. reproduction services from master copies of gramophone records, compact discs and tapes with music or other sound recordings;*

ii. reproduction services from master copies of videotapes, laser discs, DVD or other media with motion pictures and other video recordings;

iii. reproduction services from master copies of software and data on all kind of disks, tapes, cartridges and other media

This service code does not include:

- colour printing of images from film or digital media, cf. 998386

- audio and video production services, cf. 999613

4. Further the CBIC vide Circular No. 84/03/2019 GST issued under F.No. 354/428/2018-TRU dated 01.01.2019 clarified the issue related to classification of printing of picture covered under the service code 998386. The relevant portion of the said circular is reproduced below:-

i) It has been brought to the notice of the Board that the service of “printing of pictures” correctly covered under service code 998386 - “Photographic and video graphic processing services” is being classified by trade under service code 998912 - “Printing and reproduction services of recorded media, on a fee or contract basis”. The two service codes attract different GST rate of 18% and 12% respectively and therefore wrong classification may lead to short payment of GST.

ii) The matter has been examined. According to Explanatory Notes to the scheme of classification of services, the service code “**998386 Photographic and videographic processing services, includes, -**

“developing of negatives and the printing of pictures for others according to customer specifications such as enlargement of negatives or slides, black and white processing; colour

printing of images from film or digital media; slide and negative duplicates, reprints, etc.; developing of film for both amateur photographers and commercial clients; preparing of photographic slides; copying of films; converting of photographs and films to other media”

iii) Further, according to explanatory notes, the service code 998912 “Printing and reproduction services of recorded media, on a fee or contract basis” clearly excludes, -

-colour printing of images from film or digital media, cf. 998386,

-audio and video production services, cf. 999613”

iv) In view of the above, it is clarified that service of “printing of pictures” falls under service code “**998386: Photographic and videographic processing services**” and not under “998912: Printing and reproduction services of recorded media, on a fee or contract basis” of the scheme of classification of service annexed to notification No. 11/2017-Central Tax(Rate) dated 28.06.2018. The service of printing of pictures attracts GST @ 18% falling under item (ii), against serial number 21 of the Table in notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

5. The West Bengal Authority for Advance Ruling in their order dated 30.05.2018 has not discussed the matter related to SC **998386 Photographic and videographic processing services**. Therefore the said ruling is not applicable in this case. Further it is on the moot question of



supply of goods or rendering of services, falling under HSN 4911 and SAC respectively. Thus it is immaterial in that case whether activity is of transferring of Photo/ video or of write-up when it is compared to supply of Goods.

6. The matter related to SC **998386 Photographic and videographic processing services** have been examined by CBIC in Circular No. 84/03/2019 GST issued under F. No. 354/428/2018-TRU dated 01.01.2019. On-going through the said circular it can be observed that the services provided by the applicant is similar to the services under classification of SC **998386**.

7. Considering the fact in the foregoing paragraph & clarification issued by the CBIC in Circular No. 84/03/2019 GST issued under F. No. 354/428/2018-TRU dtd 01.01.2019 the **“activity of merely printing or reproducing the content given by the photographers/ retail customers on pen drive, CD, memory card or any other storage media” is classifiable under Service Code 998386.**

8. This issue is with the approval of the Principal Commissioner of CGST & Central Excise, Mumbai Central.”

04. HEARING

Preliminary hearing in the matter was held on 02.04.2019. Sh. Rahul Thakar, Advocate, appeared and requested for admission of their application. Jurisdictional Officer Sh. Bhavesh Nandan, Supdt., Range-II, Mumbai Central also appeared and made written submissions.

The application was admitted and called for final hearing on 07.05.2019. Sh. Rahul Thakar, Advocate, appeared, made oral and written submissions. Jurisdictional Officer Sh. Prabhakar Shetty, Supdt., also appeared & made written submissions. We heard both the sides.

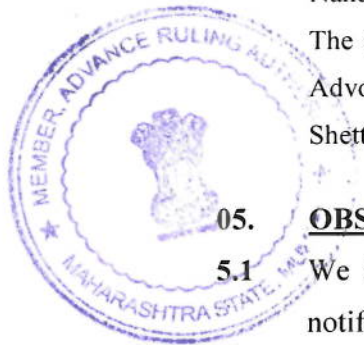
05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, written submissions and provisions of notification and clarification circular issued. The issue before us is in respect of classification of service code and applicable rate of taxes on transactions made by the applicant.

5.2 The applicant, a registered person under GST ACT, is engaged in providing printing services to photographers or retail customers. The Applicants prints the photographs in various sizes as per the requirement of the photographers and retail customers, who shoot images using Digital Cameras and provide contents (photos) to Applicant in Pen Drive, CD, Memory Card, or in any other storage media.

5.3 They have submitted that there are two competing entries for their supply viz. SAC Code 998912 [*“Printing and reproduction services of recorded media, on a fee or contract basis”*] and SAC Code 998386 [*“Photographic and videographic processing services”*].

5.4 We find that the facts of the subject transaction, as explained by the applicant in their submissions is very clearly covered by CBIC Circular No. 84/03/2019 GST dated



01.01.2019 issued under F.No. 354/428/2018-TRU. The relevant provisions of the said Circular is reproduced as under:-

“i) The matter has been examined. According to Explanatory Notes to the scheme of classification of services, the service code “998386 Photographic and videographic processing services, includes, -

“developing of negatives and the printing of pictures for others according to customer specifications such as enlargement of negatives or slides, black and white processing; colour printing of images from film or digital media; slide and negative duplicates, reprints, etc.; developing of film for both amateur photographers and commercial clients; preparing of photographic slides; copying of films; converting of photographs and films to other media”

This service code does not include:

- motion picture film processing and post-production services, cf. 999613.

iii) Further, according to explanatory notes, the service code 998912 “Printing and reproduction services of recorded media, on a fee or contract basis” clearly excludes,

-colour printing of images from film or digital media, cf. 998386,

-audio and video production services, cf. 999613”.

iv) In view of the above, it is clarified that service of “printing of pictures” falls under service code “998386: Photographic and videographic processing services” and not under “998912: Printing and reproduction services of recorded media, on a fee or contract basis” of the scheme of classification of service annexed to notification No. 11/2017-Central Tax(Rate) dated 28.06.2018. The service of printing of pictures attracts GST @ 18% falling under item (ii), against serial number 21 of the Table in notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.”

5.5 From the submissions made by the applicant we find the Applicant is merely printing or reproducing the content given by the photographers or retail customers on a recorded media like pen drive, CD, Memory card or other storage area, etc. The editing or processing is done by the professionals or retail customers themselves. The Applicant merely does *colour printing of images from film or digital media and supplies colour prints to the customers.* The abovementioned Circular very clearly states that such *colour printing of images from film or digital media of 998386 are exclusively excluded from the service code 998912 i.e. Printing and reproduction services of recorded media, on a fee or contract basis”.* Hence applying the provisions of the said Circular to the subject case at hand, we find that the applicant is supplying services falling under SAC 998386 and the subject transaction is therefore covered under Entry 21 of Notification No. 11/2017- C. Tax (Rate) dated 28.06.2018 and attracts GST @ 18%.

5.6 We also find that the Applicant has, in their defense, cited ARA order passed by the West Bengal AAR in the case of Photo Products Ltd. dated 30.05.2018. It appears that

the West Bengal Authority for Advance Ruling in their order dated 30.05.2018 has not discussed the matter related to SC 998386: **Photographic and videographic processing services**. Further, it is seen that while the said authority passed their order on 30.05.2018, the above said circular was issued only after the said order was passed i.e. on 01.01.2019, which implies that the Circular was not in existence when the order of the West Bengal AAR was passed. We also have to state that the order of the West Bengal AAR is not binding on us.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 130/2018-19/B- 60

Mumbai, dt. 24/05/2019

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1):- Whether the activity of merely printing or reproducing the content given by the photographers / retail customers on pen drive, CD, memory card or any other storage media will be classifiable under Service Code 998912 or 998386?

Answer :- **The activity of merely printing or reproducing the content given by the photographers / retail customers on pen drive, CD, memory card or any other storage media will be classifiable under Service Code 998386 and liable to tax @18% (9 % each CGST and MGST).**



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax , Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.