CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70891/2016-SM[BR] dated 05/04/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/51780/2015	EMIRATES TECHNOLOGIES PVT LTD A-8(A), SECTOR-62, NOIDA UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

A. K. BATRA & ASSOCIATES
A-36, IST FLOOR,
RAJOURI GARDEN, RING ROAD,
NEW DELHI,

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. ~~15 Office Copy~~ ~~16 Guard File~~

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/51780/2015-[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-1/101/2014-15 dated 28/01/2015 passed by Commissioner of Central Excise & Customs (Appeals-I), Meerut)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Emirates Technologies Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, **Respondent**
Meerut

Appearance:

ShriVarun Gaba, Advocate, for Appellant
Shri A.K. Goswami, Additional Commissioner, (AR) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 05/04/2016

FINAL ORDER NO. 70891/2016

Per: Anil Choudhary

The appellant is a service provider under the classification "Renting of immovable property service" and is registered with the Department. The appellant is in appeal against Order-in-Appeal dated 28/1/2015 by which the disallowance of Cenvat credit having been upheld for Rs.5, 76, 800/- in relation to Market Intelligence Report for Gurgaon and also Rs. 2, 88, 230/- being towards brokerage expenses paid to realistic agency for finding tenant.

2. SCN dated 31/3/2013 was issued for the period 2010-11 proposing disallowance of Cenvat credit among others for professional charges paid to GLM property consultants being professional charges in respect of Market Intelligence Report for the appellant. It appeared to Revenue that the services have used at Gurgaon, not at Noida. As such, the same has not been used in providing output services at Noida and regarding the amount of Rs.2, 88, 230/- the same is in respect of invoices raised by the DTZ International Property Advisers Pvt. Ltd, Bangalore stating that fee charged as performance Bonus to assessee towards striking deal with Lessee dated 30/10/2010, invoice dated 30/10/2010 states that amount charged towards performance for the year 2010–11, without giving any specific name of the tenant or person. The appellant contested the SCN, vide Order-in-Original dated 07/02/2014 the proposed disallowance was confirmed along with interest and equal amount of penalty under

Section 78 of the Finance Act, 1994. Being aggrieved the appellant preferred appeal before the ld. Commissioner (Appeals) who vide the impugned order allowed the appeal in part, but upheld the disallowance of Cenvat credit along with proportionate amount of penalty, at Rs.8, 65, 080/-.

3. Being aggrieved, the appellant is before this Tribunal.

4. The ld. Counsel urges that the definition of "input service" as given in Rule 2 (l) includes "market research." He further urges that the search may be with respect to the existing output service with respect to prospect of future output service. He further urges that input service is with respect to the earning of rental income, and it is an admitted fact that the business of the appellant is renting of immovable property. He further urges that the ld. Commissioner have erred in agreeing with the findings of the Adjudicating Authority that the "market research" service received, is with respect to the scope of rental income for the appellant and accordingly, the same cannot be said to be covered at Noida. As regards the amount of Rs.2, 88, 230/- is concerned, he points out from the finding of ld. Commissioner (Appeals) which states that thus, the invoices states – Fee Charged for performance to M/s Emirates Technologies Pvt. Ltd., and concluded by DTZ. Actually the service pertains to Real Estate Agency Services. He draws my attention to clarificatory letter dated 26/11/13 issued by the service provider DTZ. He states giving reference to the 2 invoices in question that the service with reference to Invoice No. 2034 dated 30/4/10 relates to Real

Estate Agency Service Fee for leasing of office Space to "Pearson Group" 8th floor, Tower A, Knowledge Boulevard, Noida and similarly Invoice No. 2340 dated 30/10/2010 relates to Real Estate Agency Service Fee for leasing of office Space to "Kronas" in the 8th floor of Tower A, Knowledge Boulevard, both at Noida. The clarificatory letter further says that service tax charged, has been deposited with the Service Tax Department along with other services provided. The ld. Counsel further urges that in view of the clarification given that the invoices relates to brokerage expenses for finding tenant raised by DTZ the nomenclatures used in the invoice as performance or bonus, is synonymous with brokerage or commission, and as such, the ld. Commissioner (Appeals) have erred in drawing adverse inference. He also stated that it is not in dispute that the appellant have not earned rental income from the tenants in question being Central Bank, Kronos. Accordingly, he prays for allowing the same. The ld. Counsel for the appellant have also demonstrated from a copy of Ledger account of the input service providers which evidences that the appellant have paid the service charges including service tax by cheque and the appellant also deducted income tax at source, as applicable. The ld. Counsel also relies on the ruling of Honourable Bombay High Court in the case of Coca-Cola India Pvt. Ltd Vs. CCE, Pune-III 2009 (15) STR 657 (Bombay), wherein it has been held that use of the word "activities" in the phrase "activities relating to business" further signifies the wide import of the phrase, the rule-making authority had not employed any qualifying words before the word activities, like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business falls within the definition of input service provided there is a relation between input service/input in the manufacture of output or the service activity. Therefore, the phrase activities relating to business are words of wide import. He, further, relies on the said ruling at Para 38, which reads "as in the service tax paid on expenditure incurred by the assessee among others on advertisements, sales promotion, market-research will have to be allowed as input credit more particularly if the same forms part of the price of final product of the assessee on which Excise duty is paid. The appellant also relies on the judgement of Honourable Bombay High Court in the case of CCE, Nagpur Versus Ultratech Cement Ltd 2010 (20) STR 577 (Bombay) wherein the Honourable Court considering the allowability of services received under the definition of "input service" in so far as it relates to the manufacture of final products is concerned, consists of three categories of services. The 1st category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The Second category covers the services which are used for clearance of final products up to the place of removal and the Third category includes "input services" namely (i) services for setting up modernization etc., (ii) services used in an office of the factory, (iii) services like advertisement or sales promotion market research, storage upto place of removal, procurement of inputs,

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(iv) activities relating to business, such as, accounting, auditing, etc. Thus, the definition of "input service" not only covers services which fall under the substantial part but also, covers services, which are covered under the inclusive part of the definition. It is also clarified that 'service' also includes various services used in relation to the business of manufacture of final product, being prior to manufacture of final product or after the manufacture of final products. The expression "activities in relation to business" in the definition of "input service" includes activities which are integrally connected with the business of the assessee. The ld. Counsel also draws my attention to Rule 6(5) of CCR, 2004 which provides notwithstanding anything contained in Sub-rule (1) (2) and (3), credit of the whole of service tax paid on taxable services as specified in Sub-clauses would in clause 5 Real Estate Agency Service of clause (105) of Section 105 of the Finance Act, shall be allowed unless such service is used exclusively in or in relation to manufacture of exempted goods or providing exempted services.

5. The ld. A.R. for Revenue relies on the impugned order. He further states that the invoice in question indicates that it is with respect to finding of tenant with respect to appellant is properly for arriving at the linkup. Accordingly, the disallowance of Cenvat credit is justified. As regards disallowance of credit on market research report, he states that it is evident that the said report could not be utilized by the appellant service provider for

providing taxable output service. Accordingly, the disallowance have been rightly made.

6. Having considered the rival contentions, I find that so far the service of market research is concerned, the same relates to professional services for market-research. Without recording any finding that the appellant have no rental income from Gurgaon and or have not made any investment either prior to obtaining the report or after the obtaining of report for earning rental income from the tenants. Accordingly, I hold that the said expenditure is not with respect to earning of Revenue or providing of output service and as such, I hold the same is inadmissible. So far as the amount of Rs.2, 88, 230/- is concerned, being service tax to DTZ, it appears from the invoice & clarification issued by the service provider that the same is with respect to finding of tenant for the appellant with respect to the property located at Noida. I remand this issue to the adjudicating authority for verification of the rent agreement with the tenants and if the appellant have earned the income from them, service tax so paid amounting to Rs.28,823/- shall be allowable. Accordingly, the appeal is allowed in part by way of remand.

(Dictated and pronounced in Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy

25.10.16

सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001