CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

SINGLE MEMBER

Service Tax Appeal No. 51121 of 2019

(Arising out of Order-in-Appeal No. 187/ST/DLH/2018 dated 24.1.2019 passed by Commissioner (Appeals), Central Goods & Service Tax, Delhi)

M/s Om Logistics Limited Appellant
130, Transport Centre, Ring road,
Punjabi Bagh, New Delhi-110035.

Versus

Commissioner (Appeals) Central Goods & Service Tax, Delhi Respondent
Central Tax/GST, Delhi, Room No. 134,
C.R. Building, I.P. Estate,
New Delhi – 110002.

Appearance

Ms. Vibha Narang, Advocate - for the appellant
Shri P. Gupta, DR - for the respondent

Date of Hearing/Decision: 05/12/2019

CORAM:
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 51619/2019

Bijay Kumar :

The present appeal is filed against the impugned order dated 24.1.2019 passed by learned Commissioner (Appeals), CGST and Central Excise, Delhi by which the order of lower adjudicating authority dated 31.8.2018 has been upheld. The lower adjudicating authority has confirmed the demand of Rs. 4,77,219/- on account of Cenvat credit availed on the payment of service tax for keyman mediclaim/insurance policy in terms of Rule 14 of Cenvat Credit Rules, 2004 along with interest under Section 75 of the Finance Act, (for short, the Act). A penalty of equivalent amount has been imposed in terms of Rule 15 of Cenvat Credit Rules read with Section 78 of the Act. Being aggrieved by the impugned order, the appellant is in appeal before this Tribunal.

2. The brief facts of the case is that the appellant M/s Om Logistics Ltd. is registered with service tax department for the provision of taxable services namely courier agency services, business auxiliary service etc. and regularly discharging service tax liability and is also filing ST-3 returns regularly in accordance with the provisions of the Act and Rule made thereunder. During the period 2015-2017, the appellant was availing the Cenvat credit on the expenses incurred in respect of 'Keyman Insurance Policy' of the Key Managerial Person. In the instant case, the Keyman Insurance Policy pertaining to Shri Anil Singhal, who has Managing Director of the appellant, upon his life. The appellant has taken Keyman Insurance Policies from HDFC life, Kotak Life Insurance etc.

3. The case of the Department is that the life insurance policy of the keyman person, Shri Anil Singhal (Managing Director), is primarily for his personal use and not for any business purposes. Accordingly, show cause notice dated 16.3.2018 was issued proposing reversal of Cenvat credit availed upon the insurance policy under the provisions of Section 73(1) of the Act read with Section 14 of the CCR along with the interest under Section 75 and penalty under Section 78 of the Act read with the Rulen 15 of Cenvat Credit Rules, 2004.

4. The appellant contested the demand which was, however, not appreciated by the primary adjudicating authority and the demand was confirmed. On appeal, the ld. Commissioner, sustained the order of lower adjudicating authority.

5. Learned Advocate on behalf of the appellant submits that the issue is decided in their favour in their own appeal being Service Tax appeal No. 52845 0f 2018 (SM) wherein it was held that insurance premium paid for the Keyman insurance to the insurer is available input service under Rule 2(l) of the Cenvat Credit Rules and the appellant is entitled for the same.

6. On the other hand, the learned Authorised Representative supports the impugned order and says that the appellant in this case has not produced the insurance policy but only the receipt of premium. Therefore, the adjudicating authority could not examine the issue regarding the payment of premium. In the circumstances, he is of the opinion that the matter needs to go back the adjudicating authority for deciding the issue afresh.

7. Having considered the rival submission and examination of the issue regarding availability of credit on insurance policy. The issue has been decided by this Tribunal in favour of the appellant in their own case in Service Tax Appeal No. 52845 of 2018-SM. I find that the issue in the said order is identical to the case at hand. The relevant portion of this order is also being reproduced as under :

> "Having considered the rival contentions, I find that it is clearly mentioned in the policy documents, that the benefit under the policy in question is payable to the policy holder –appellant company. Nomination is generally required to get benefit of the policy. Where the policy holder is a company under the Company Act, (having perpetual existence) in such cases, no nomination is required.

> Thus, the Court Below was in error in imposing demand along with interest under Section 75 ibid and holding that the appellant company is not the beneficiary in the policy. Accordingly, I allow this appeal holding that the appellant is entitled to benefit of Cenvat credit under Rule 2(l) of Cenvat Credit Rules, on the Keyman Insurance. The impugned order is accordingly modified."

8. In view of above, I set aside the impugned order and allow the appeal with consequential benefit, if any.

(Dictated & pronounced in open Court)

(Bijay Kumar)
Member (Technical)

RM