CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH COURT NO.II

Service Tax Appeal No.52845 of 2018 (SM)

[Arising out of Order-in-Appeal No.102/ST/DLH/2018 dated 6.6.2018 passed by the Commissioner (Appeals-I), Central Goods and Service Tax, New Delhi]

M/s. Om Logistics Ltd. **Appellant**
130, Transport Centre, Ring Road,
Near Punjabi Bagh Flyover,
New Delhi.-110 035.

VERSUS

Commissioner of Central Goods and Service Tax, **Respondent**
Room No.134, Central Revenue Building,
Indraprastha Estate,
New Delhi- 110 002.

APPEARANCE:

Ms. Sohini, Advocate for the appellant
Shri K. Poddar, Authorised Representative for the respondent

DATE OF HEARING:14.08.2019
DATE OF DECISON:14.08.2019.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51222/2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is whether the cenvat credit taken by the appellant company on the "Term Insurance Policy" on the life of the Managing Director-Shri Ajay Singhal, is rightly taken, and for determining

whether these policies are taken by the appellant company, which is the Policy Holder in the policy in question, and whether the policy was taken in respect of 'Keyman-person'.

3. It is the second round of litigation. Earlier this matter came before this Tribunal in Appeal No.ST/50396/2017(SM) and vide Final Order No.55785/2017, this Tribunal took notice of the submissions of the ld. Departmental Representative, that there is a clear cut finding by the court below that subject policy taken is not a Keyman policy, as is evident from the cover note of the policy, where no indication is there that subject policy is a "Keyman Insurance Policy". Accordingly, this Tribunal appreciating the nature of policy, remanded the matter to the Original Adjudicating Authority, to decide the nature of the policy afresh.

4. Pursuant to remand vide order-in-original dated 30.11.2017, the Asstt. Commissioner has disallowed the cenvat credit observing that the insurance policy in question is on the life of Shri Ajay Singhal-Managing Director of the Company. Further, taking notice of the case laws cited by the appellant in the case of **M/s. Anjani Portland Cements Ltd. - 2016 (12) TMI 212 – CESTAT- Hyderabad,** wherein it has been held that Keyman Insurance Policy cannot be said to fall within the Exclusion portion of the definition of "input service". It was further observed that in the policy in question, in the column "nomination" and nominee details, the same are left blank, and nothing is filled in. Further, observing that under the policy benefits payable to the policy holder/life assured/spouse, of the life assured /or to the nominees, where a valid nomination has been registered. Further, it was observed that under such circumstances, the benefit under the policies in the happening of the event shall accrue

to the policy holder or spouse of the policy holder. In other words, the benefit of the policy will never go to the appellant company.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order was pleased to reject the appeal, it was observed that, had there been any intention of benefitting the firm from such policies, the appellants company would have been the nominee in such policies.

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

7. Ld. Counsel states that it is mentioned in the benefit column of the Policy, that the benefit under the policy shall accrue on the death of the life insured. Admittedly, the policy holder in this case is the appellant company, and the life insured is of the Managing Director-Shri Ajay Singh, the Keyman person. Further, my attention is drawn to the Board Resolutions annexed an Annexure "D" to the appeal paper book, wherein resolution passed by the Board of Directors resolves taking of Keyman insurance on the life of its Managing Director-Shri Ajay Singhal. He further pointed out that from the policy documents, that the policy was taken from Allianz Bajaj Life Insurance Company. It is clearly mentioned on the policy documents mentioned as "Keyman". He further states that 'KMP' is not mentioned in the policy issued by HDFC and Om Kotek Mahindra, but from the policy documents, the Board Resolution and from the benefit clause read harmoniously, it follows, "the benefit under this policy is payable to the appellant company, being the policy holder. Thus, the court below erred in observing that the appellant company did not

appear as nominee, thus is not the beneficiary. Accordingly, he prays for allowing their appeal.

8. Ld. Authorised Representative relied upon the impugned orders.

9. 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.

[Dictated & pronounced in open court]

(Anil Choudhary)
Member (Judicial)

ckp