IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 640 of 2011
Service Tax CO No. 57342 of 2013

[Arising out of Order-in-Appeal No. 23/ 2011 dated 31.1.2011 passed by the Commissioner of Central Excise, Bhopal]

Commissioner of Central Excise **Appellant**
Bhopal

Vs.

M/s. D K Insulation Industries **Respondent**

Appearance:
Ms Neha Garg, DR for the Appellants
Shri M K Sharma, CA for the Respondent

<u>CORAM</u>:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing/ Decision: 03.03.2017

FINAL ORDER NO. 52327/2017

<u>Per: Justice (Dr.) Satish Chandra:</u>

The present appeals filed against the order in original No. 23/2011 dated 31.1.2011.

2. The brief facts of the case are that the appellant, during the period under consideration (2004 – 2009), was the manufacturer of some parts of electrical machinery and insulation fittings etc. The appellant got a tender from the Ordinance Factory for supply of goods specified from army. Some goods were manufactured by the

appellant and remaining goods were procured by the appellant on payment basis. The seller of the goods M/s. Sonal Composite, Bhopal has charged the VAT which was reimbursed by the ordinance factory to the appellant. The assessee has claimed the trading activity where trading management was done, some goods were manufactured and remaining goods were purchased from the M/s. Sonal Composite and supplied to the ordinance factory by keeping the trading margin. The department's view is that appellant has worked as a commission agent, so this activity of the appellant falls under the category of "Business Auxiliary services", therefore they demand the service tax.

3. By the impugned order, the authority below accepted the plea of the appellant by observing that no service tax is payable on such trading activity. Being aggrieved, the Revenue has filed the present appeal.

4. With this background, we heard Ms Neha Garg, learned DR appearing for the Revenue and Shri M K Sharma, learned Chartered Accountant for the respondent-assessee and perused the record.

5. After hearing both the parties, we find that it is not a disputed fact that appellant got the tender being the lower cost mentioned therein, from the Ordinance factory to supply the goods as per the requirement of Army. The appellant is also a manufacturer. Some goods were manufactured by M/s. Sonal Composite who also claimed the exemption under SSI category. The appellant has

purchased the goods from M/s. Sonal Composite after making the full and final payment and on which VAT was also charged. The appellant raised the independent bill by keeping his trading margin and also charged VAT from the Ordinance Factory. This is, admittedly, a trading activity where huge trading margin was kept by the appellant. When it is so, then the said activity cannot be considered as “Business auxiliary service”, specially when M/s. Sonal Composite has nothing to do with the Army. Hence, we find no reason to interfere with the impugned order. The same is sustained.

6. In the result, the appeal filed by the Department is dismissed. Cross Objection filed by the appellant is also disposed of.

(Dictated and pronounced in the open Court)

(Ashok K Arya)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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