



**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH**

SINGLE MEMBER BENCH

**SERVICE TAX APPEAL NO. 54785 OF 2023**

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-137-22-23 dated 10.11.2022 passed by the Commissioner (Appeals) Central Goods and Service Tax, Bhopal]

**M/S JAMWANT PANDEY & SONS**

**Appellant**

Village-Mankhari, Post Office-Bathia,  
Police Station-Rampur Bghelan, District-Satna  
Madhy Pradesh-485111

Vs.

**COMMISSIONER APPEAL CENTRAL GOODS  
AND SERVICE TAX AND CENTRAL EXCISE,  
BHOPAL**

**Respondent**

48 Administrative Area, Arera Hills, Bhopal-462011

**Appearance:**

Present for the Appellant : Ms. Priyanka Goel, Advocate

Present for the Respondent: Shri V J Saharan, Authorised Representative

**CORAM:**

**HON'BLE MR. RAJEEV TANDON, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 55110 /2024**

**Date of Hearing : 04/03/2024**

**Date of Decision: 06/03/2024**

**RAJEEV TANDON**

1. The present appeal has been filed by the appellant assailing the Order-in-Appeal No. BHO-EXCUS-001-APP-137-22-23 dated 10.11.2022 passed by the Commissioner of (Appeals), CGST Bhopal. This is the second round of litigation in the matter as in the initial round of litigation before the Commissioner (Appeals) the matter was remanded to the original authority for consideration of certain documents tendered by the original authority.

2. The present dispute involves a demand for payment of service tax for an amount of Rs. 8,86,151/- for the financial year



2014-15 to 2016-17 on "manpower supply services" rendered by the appellant. The order in appeal also confirms a penalty of equal amount under section 78 of the Finance Act as well as also imposes of penalty of Rs. 10,000/- under section 77(2) of the Finance Act.

3. I have heard Ms. Priyanka Goel, learned counsel for the appellant and Shri V J Saharan, learned authorized representative for the department and perused the appeal records.

4. It is observed that the demand referred to above has been made out by the department exclusively on the basis of certain figures as culled out from the 26 AS statement of the appellant for the relevant financial years. The department has alleged that the noticee failed to provide complete information about their tax liability on certain services rendered and hence the demand.

5. The appellant is engaged in the business of supply of "manpower services" to M/s Prism Johnson Limited Company, Satna and the appellant is the proprietor of the firm Jamwant Pandey & Sons. The appellant a service tax registrant categorically asserts that they are engaged in supply of "manpower services" only to M/s Prism Johnson Limited and have deposited their tax regularly availing the benefit of Exemption Notification No. 15/2012-ST dated 17.03.2012. That they had submitted the computation sheets for the financial year 2014-15, 2015-16 and 2016-17 issued by M/s Prism Johnson Limited duly indicating the value of taxable service and the service tax payable therein for the aforesaid years. They had filed ST-3 returns and deposited the due amount of service tax leviable. They, therefore, submit that the aforesaid demand issued to them invoking extended period of



limitation is not maintainable. They contend that in terms of the Notification No. 15/2012-ST dated 17.03.2012 vide serial no. 8 they were only required to make payment of 25% of the tax leviable while the balance 75% was required to be paid by M/s Prism Johnson against the total tax liability for the financial year 2014-15. And in subsequent years service receiver was liable to pay 100% service tax toward service tax liability. **The appellant further alleges that issuance of the show cause notice solely on the basis of 26 AS statement is also bad in law and is contrary to the decision of this Tribunal rendered in the case of **Quest Engineers & Consultants Pvt. Ltd. Vs. Commissioner, CGST & C. EX., Allahabad<sup>1</sup>** as also in the case of **Kush Constructions vs. CGST NACIN, ZTI, Kanpur<sup>2</sup>**.**

6. Learned authorized representative appearing for the department has submitted that the appellant failed to correctly show the computation figures towards the duty liability as evident from the 26 AS statement and there was nothing wrong in the department having culled out the said figures from the said statement obtained from the Income Tax Authorities.

7. It is observed that the aforesaid demand, made out is essentially on the basis of the figures incorporated in 26 AS statement, issued under section 203 AA of the Income Tax for the said years. The appellant have also drawn attention towards certificate dated July 29, 2020 issued by M/s Prism Johnson Limited, categorically asserting discharge of tax liability. The same for ready reference, is scanned as hereunder:

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1      **2022(58) GSTL 345 (Tri.-All)**  
2      **2019 (24) GSTL 606 (Tri-All)**



ANNEXURE P-7 (011)

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Ref: PJI/EX/CER/Jamwant/01

Date: 29.07.2020

**TO WHOMSOEVER IT MAY CONCERN**

This is to certify that we M/s Prism Johnson Limited (Formerly Prism Cement Limited), Satna (M.P.) have paid Service Tax as 'Service Recipient' under the provisions of rules under Reverse Charge Mechanism against the category of "Manpower Supply Service" pertaining to Bills raised by M/s Jamwant Pandey & Sons, Village-Mankahari, Post-Bathia, Distt.-Satna (M.P.) PIN-485111 during the period from Apr-2014 to Jun-2017.

As per provisions of Finance Act, 1994 and keeping in view the procedure set out in the Notification No. 30/2012-ST dtd.20.06.2012 as amended time to time, we being the recipient of service have deposited the service tax on all bills raised to us under Reverse Charge Mechanism for the period mentioned above.

Notwithstanding the above, the said certificate is issued exclusively for the request to provide before Excise & Service Tax Authorities.

Place : Mankahari  
Date : 29.07.2020

for Prism Johnson Limited  
(Formerly Prism Cement Ltd.)

  
P. K. Shrivastava  
Sr. Manager- Fin.-GST  
(Authorised Signatory)

**PRISM JOHNSON LIMITED**  
(FORMERLY PRISM CEMENT LIMITED)  
(Cement Division)

Works Village Mankahari, P.O. -Bathia, Dist. Satna - 485 111 (M.P.) India T: +91-07672-275301 / 302600  
Corres. Add.: 'Rajdeep', Rewa Road, Satna - 485 001 (M.P.) India. T: +91-07672- 402726  
Registered Office: Prism Johnson Limited, 305, Laxmi Niwas Apartments, Ameerpet, Hyderabad - 500 016, India.  
w: www.prismjohnson.in, www.cement.prismjohnson.in, E: info@prismjohnson.in

CIN: L26942TG1992PLCO14033





8. I fail to derive any merit from the department's contention that the appellant was also rendering other services during the impugned period in view of the categorical assertion of M/s Prism Johnson Limited that they were only rendering "manpower services" to their clients during the impugned period and as also reiterated by the learned advocate during the course of hearing. Moreover, the department has also failed completely, to state, if what services were being rendered by the appellant. Mere bald statement cannot be considered enough to sustain such serious an allegation. Thus, the revenue's said contention is without any merit. Learned advocate has also submitted that the department wrongly took the total figures as indicated in the said 26 AS form, and disregarded the various abatement/exemption that the appellant was entitled to.

9. The contention of the department that they came to know of the appellant's activities only through the 26 AS statement is nothing more than plainly frivolous, as the appellant had been regularly submitting the ST-3 returns and paying tax as leviable on the "manpower service" rendered. There is nothing to show from the records that the appellant was not properly maintaining the books of account or had not recorded the various transactions. The department has nothing to substantiate its case, except for some bland statements that are essentially presumptive in nature. Moreover, 26 AS is not a prescribed statement/document for purpose of determination of service tax liability. It was for the department to lead its case with cogent evidence. The said 26 AS statement is maintained in respect of various receipts as applicable for the Income Tax Department for purpose of tax deducted TDS as



relevant under the Income Tax Act. Service Tax would have to essentially depend on the value of the taxable service rendered and is unlike the taxability under the IT laws. The issuance of the show cause notice solely on the basis of the figures indicated in 26 AS cannot be sustained.

10. As for the larger period of limitation invoked, in the given facts of the aforesaid case and the fact that the appellant was entitled to the exemption referred to (supra) and in view of the department not being specifically able to point out any of the essential ingredients for invocation of the larger period of limitation, I am of that the view that the same is not applicable in the present case.

11. The coordinate Bench of this Tribunal in a case of pertaining to issuance of demand solely on the basis of 26 AS statement in the case of **Kush Construction (supra)** had observed as under;

“.....On perusal of record, we note that the appellants were registered with the Service Tax Department and also they were filing ST-3 returns. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income-tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal.”

12. In view of the discussions aforesaid, and the legal position as explained, the order of the learned appellate authority cannot be



sustained and is, therefore, liable to be set aside. The impugned order of the lower authority is, therefore, set aside and the appeal filed by the appellant is hereby allowed with consequential relief, if any, as per law.

[Order pronounced on **06/03/2024**]

**(RAJEEV TANDON)**  
**MEMBER (TECHNICAL)**

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