



भारत सरकार / Government of India

वित्तमंत्रालय, राजस्वविभाग/Ministry Of Finance, Department Of Revenue
OFFICE OF THE COMMISSIONER, CENTRAL GOODS & SERVICE TAX, GST
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DIN 20201266VJ0000712288

SHOW CAUSE-CUM-DEMAND NOTICE

(Sr. No. 165/ST/TPI/JC/NED/LTR/2020-21 dated 28.12.2020)

M/s ASHIRWAD CONSTRUCTION, situated at GARSOLI, RENAPUR, LATUR, unregistered under Service Tax, having PAN No. AGVPD2803R (hereinafter referred to as “the assessee”), is engaged in providing services including taxable supply services covered under the Finance Act, 1994 (hereinafter referred to as “the Act”).

2.1 Whereas information regarding Value of Net Turnover of Taxable services, as declared by the assessee to Department of Commercial Taxes, Maharashtra State for the year 2015-16 was obtained. From the said data, it appeared that the assessee is providing Taxable services under Finance Act, 1994 to its customers. However, on going through the records available, it is observed that the Tax payer was unregistered under Service tax regime during the relevant period.

2.2 Whereas it further appears on scrutiny of the said data that the assessee was not registered under Finance Act, 1944 (hereinafter referred to as ‘Act’) even though the taxable services were provided by the assessee. To obtain the reason for not taking registration for payment of Service Tax, mails dated 23.12.2020, were issued to the assessee and various information and details were called for.

3. In spite of mails and letters mentioned in aforesaid Para, the assessee neither submitted the requisite information which was called for, nor explained the reasons for not taking Service Tax registration under the Act, even the assessee had declared Turnover in MAHAVAT Return exceeding Rs 10 lakhs. Notification No. 33/2012 dated 20.06.2012, exempts the value upto 10 lakhs from payment of Service Tax and person providing services upto 10 lakhs need not take registration under the Act as envisaged under Section 69 of the Act. Thus, it is evident that there is an act of omission and commission on the part of the assessee with intent to evade payment of Service tax. The non-payment of the service tax by the assessee on the value even after being pointed out by the Department leads to the conclusion that in spite of legal provisions to furnish the correct information to the department, the assessee is not willing to share such correct information with the department.

4. It appears from the MAHAVAT data that the assessee is engaged in providing Taxable Services in addition to any other service the assessee may be providing.

5. This Show Cause Notice is therefore being issued for demand of service tax on the basis of values of services determined from the MAHAVAT Return Value for FY 2015-16.

6.1 For the purpose of this notice, the Value of Net Turnover of TAXABLE SERVICE as per MAHAVAT data is being considered as value of taxable services provided during the FY 2015-16 by the assessee.

6.2 Whereas it, accordingly, appears that in view of the provisions of Section 68(1) of the Act read with the provisions of Rule 6(1) of the Rules, the assessee was required to pay service tax on monthly / quarterly basis to the credit of the Central Government, on such values as described below, at a rate specified in Section 66B of the Act as applicable during the relevant period. The calculations of such values and service tax payable by the assessee for F.Y. 2015-16 is enumerated in the table given below:-

Calculation of value and service tax payable thereon

(Amount in Rs)

Year	Taxable Value as per MAHAVAT data	Rate at which Service Tax is being demanded	Service Tax Payable and being demanded
1	2	3	4
2015-16	Rs. 12,50,80,697/-	14.50%	Rs. 1,81,36,701/-
TOTAL			Rs. 1,81,36,701/-

6.3 The assessee has failed to come forward to explain the value of services provided as per MVAT data. Therefore the department has no other option but to proceed with using best judgment method as envisaged under Section 72 of Finance Act, 1994 i.e. calculating the service tax liability based on records available with the department i.e. on basis of values of services determined from MVAT data available which was supplied by VAT department. Therefore, the value as per MVAT data has been considered for calculation of service tax liability, and is treated as taxable value in terms of Section 67 of Finance Act, 1994. Thus, it appears that the assessee was unregistered in Service Tax regime for the period 2015-16, Service tax Calculated on MVAT value shown at column no. 2 of the Table above on the value and service tax shown in column no. 4 of the Table above.

6.4 Further, it appears that, while the assessee was liable to assess and pay the service tax on the services provided every month/every quarter and declare the information of services provided, value thereof, service tax liable to be paid and service tax actually paid, service wise, in the specified form ST-3 return, on half-yearly basis, as specified in Section 70(1) of the Act read with the provisions of Rule 7 of the Rules, which they have failed to do, as unregistered. Thus, the assessee has suppressed from the Department, consideration for providing the taxable services, involving service tax liability as detailed in Para 6.2 above, with an intent to evade the payment of said service tax, for the period 2015-16.

6.5 Rule 5A(2) of Service Tax Rules, 1994 requires every assessee to make available to the officer authorized in this regard various records within reasonable time not exceeding fifteen days. In the instant case, the assessee has failed to take action as prescribed in Rule 5A(2) and has thus contravened the provisions thereof.

7. Whereas from the foregoing, it appears that the assessee, **M/s ASHIRWAD CONSTRUCTION** situated at **GARSOLI, RENAPUR, LATUR**, as contravened the following provisions of the Finance Act, 1994, and rules made thereunder:-

- i) Section 69 of the Act read with Rule 4 of the Service Tax Rules 1994, as applicable during the relevant period, in as much as they failed to make an application to the [concerned Superintendent of Central Excise] in Form ST-1 for registration within a period of thirty days from the date on which the Service Tax under Section 66B of the Act is levied;
- (ii) Section 68(1) of the said Act read with Section 66B of the Act read with Rule 6 of the Service Tax Rules 1994, as applicable during the relevant period, in as much as they failed to pay the appropriate Service Tax for the period 2015-16, on the due dates as prescribed;
- (iii) Section 70(1) of the Act read with Rules 7(1), 7(2) & 7(3) of the Service Tax Rules 1994, in as much as they have failed to assess the service tax due, on the services provided by them and also failed to furnish prescribed ST-3 Returns with correct details in prescribed time for the period 2015-16;
- (iv) Rule 5A(2) of the Service Tax Rules 1994 in as much as they failed to produce/furnish the books of accounts, financial statements and other documents as required by the duly authorized officer vide letters/emails, within reasonable time not exceeding 15 days.

8.1 And whereas, it appears that the service tax liability as indicated in the table at Para 6.2 above, for the services provided by the assessee, would have gone unnoticed had it not been for the reconciliation done by the Department. It is a statutory obligation on the assessee to correctly pay service tax and file true and correct Returns. In the era of self-assessment, trust is placed on the assessee to correctly self-assess their tax liability and pay the same and disclose the true values in their ST-3 returns. However, in this case, on the basis of MAHAVAT information for 2015-16 received from Department of Commercial Taxes, State of Maharashtra, it was noticed that the assessee has deliberately suppressed the true value of taxable service in as much as they have neither declared the complete value of taxable service rendered during the material time nor paid the service tax liability thereon. Further, it also appears that the assessee was well aware of the fact that the business activities carried out by them was leviable to service tax. Therefore, it appears that the above acts / omissions by the assessee, tantamount to suppression of the material facts from the department with intent to evade payment of service tax and they have thereby contravened the various legal provisions of the 'Act' and the 'Rules' made there under. It therefore, appears that the provisions of proviso to Section 73(1) of the Act are correctly invocable for demanding the service tax for the extended period. Any suppression of facts resulting in wrong self-assessment causing evasion of tax, which gets detected during scrutiny by the Departmental officers, enables invocation of extended period of five years under Section 73 of the Act, as in the present case.

8.2 And whereas, it appears that the Service Tax liability as indicated in the table at Para 6.2 above, for the services provided by the assessee, would have gone unpaid, had it not been pointed out during scrutiny of third party data by the Department, as the

assessee has not taken registration for the same. Taking of Service tax Registration and filing of Returns are statutory obligation on the part of Service Provider. Under a system of self-assessment, a trust has been placed on the assessee to take registration, assess and pay service tax on their own and to intimate the details to the department by way of filing periodical ST-3 Returns. Therefore, it appears that the above acts/ omissions by the assessee, tantamount to suppression of the material facts from the department with intent to evade the payment of Service Tax and they have thereby contravened the various legal provisions of the 'Act' and the 'Rules' made there under. It therefore, appears that the provisions of proviso to Section 73(1) of the Act are correctly invocable for demanding the service tax for the extended period. Any suppression of facts resulting in wrong self-assessment causing evasion of tax, which gets detected during scrutiny by the Departmental officers, enables invocation of extended period of five years under Section 73 of the Act, as in the present case. The same also leads to imposition of penalty under Section 78 of the Act. Further the liability to pay interest is concurrent with the liability to pay Service Tax. Delay in payment of Service Tax, therefore, requires payment of interest at appropriate rates also. Hence, in the instant case the assessee is required to pay interest as applicable under the provisions of Section 75 of the Act. Further, the assessee failed to take registration under Section 69 of the Act read with Rule 4 of the Rules; failed to file returns declaring therein, the true value of the Services provided by them during the said period and the service tax payable thereon as required under Section 70 of the Act read with Rule 7 of the Rules; failed to furnish information called by an officer in accordance with the provisions of this Chapter or rules made there under; failed to produce documents called for by a Central Goods and Service Tax Officer in accordance with the provisions of the act or the rules made there under; failed to pay the tax electronically and failed to account for an invoice in his books of account and therefore are liable for payment of a penalty under Section 77(1) and 77(2) of the Act.

8.3 Invoking of extended period leads to liability to impose penalty under Section 78 of the Act. Further the liability to pay interest is concurrent with the liability to pay Service Tax. Delay in payment of Service Tax, requires payment of interest at appropriate rates. Hence, in the instant case the assessee is required to pay interest as applicable under the provisions of Section 75 of the Act on the service tax payable as enumerated in Para 6.2. Further, the assessee failed to declare the true value of the services provided by them during the said period and the service tax payable thereon as required under Section 70 of the Act read with Rule 7 of the Rules. They also failed to keep, maintain or retain books of account and other documents as required in accordance with the provisions of the Act or the rules made there under; failed to furnish information called by an officer in accordance with the provisions of the Act or rules made there under; failed to produce documents called for by a Central Excise Officer in accordance with the provisions of the Act or rules made there under; failed to pay the tax electronically and failed to account for an invoice in his books of account and therefore is liable for payment of a penalty under Section 77(1) of the Act for period 2015-16.

9. Since there is non payment of service tax as per MAHAVAT data for the year 2015-16, these are reasonable grounds to allege that the assessee has also suppressed the correct values of taxable services for 2016-17 & 2017-18 (upto June 2017).

10. Whereas it further appears that the assessee has not furnished such information and records and therefore in absence of such information, this show cause cum demand notice does not cover period 2016-17 & 2017-18 (upto June 2017). The department will consider issue of show cause cum demand notice for such period, whenever such information will be provided by the assessee or is available to the department from other sources.

10.1 Further, in exercise of the powers conferred by section 6 of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020), the Central Government has specified that the 30th day of December, 2020 shall be the end date of the period during which the time limit specified in, or prescribed is notified under the provisions of chapter V of the Finance Act, 1994 and the 31st December, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended. In the said case, the time limit specified was on or before 25.10.2020, which is before the end date i.e., 30th December, 2020. Therefore, in the said case the time limit for completion of investigation stand extended to 31st December, 2020.

11. Now therefore, **M/s ASHIRWAD CONSTRUCTION**, situated at **GARSOLI, RENAPUR, LATUR**, hereby called upon to show cause to **the Joint Commissioner, CGST & Central Excise, N-5, Town Centre, CIDCO, Aurangabad - 431003** as to why:

- (a) The extended period, as provided in proviso to section 73(1) of the Finance Act, 1994 read with Section 6 of the Taxation and Other law (Relaxation and amendment of certain provision) Act, 2020 should not be invoked on the grounds discussed in this show cause notice for demanding Service Tax beyond the period of thirty months for willful suppression of facts and contravention of the provisions of the Finance Act, 1994 and the value amounting to **Rs 12,50,80,697** /-so determined and calculated and detailed in above Para, should not be considered as taxable value for services provided by them in terms of Section 67 of Act;
- (b) The Service Tax of **Rs. 1,81,36,701/-** inclusive of Cesses not paid on taxable services provided by them, as detailed above, should not be demanded and recovered from them under the provisions of proviso to Section 73(1) of the Act;
- (c) Interest at an appropriate rate should not be charged & recovered from them as specified under Section 75 of the Finance Act, 1994 on **Rs. 1,81,36,701/-**.
- (d) Penalty under Section 77 (1)(a) of the Act, should not be imposed on them for failure to take registration under section 69 of the Act read with Rule 4 of the Rules, 1994, for the period from 2015-16;
- (e) Penalty under Section 77 (1)(c) of the Act, should not be imposed on them for failure to furnish the information called for by the Service tax officer for the period 2015-16.;
- (f) Penalty under Section 70 of the Act read with Rule 7 of the Rules and Section 77(2), should not be imposed on them for failure to furnish to the department, information

of the Service Tax due on the services rendered by the assessee, in the form of ST-3 Returns filed during the period 2015-16.

- (g) Penalty under Section 78 of the Finance Act, 1994 as amended by the Finance Act, 1994 should not be imposed on them for suppressing the material facts from the Department, with intention to evade payment of service tax, for the period from 2015-16.

12. **M/s ASHIRWAD CONSTRUCTION**, situated at **GARSOLI, RENAPUR, LATUR**, hereby directed to file their reply to this Show Cause Notice within 30 days of receipt of this notice. They are required to produce at the time of showing cause, all the evidence upon which they intend to rely, in support of their defense. They are further requested to state as to whether they wish to be heard in person, before the case is adjudicated. If no cause is shown against the action proposed to be taken, within 30 days of receipt of this notice, or the assessee or their legal representative does not appear before the adjudicating authority when the case is posted for personal hearing, the case is liable to be decided ex-parte on the basis of evidence available on records, without any further reference to the assessee.

13. The document relied upon in this case are as under:-

- a) MAHAVAT data for the year 2015-16.
- b) E- Mail dated 23.12.2020

14. The provisions of Section 174(2) of the Central Goods & Services Tax Act, 2017 empowers the proper officer to exercise the powers vested under the provisions of erstwhile Chapter V of Finance Act, 1994 read with Service Tax Rules, 1994.

15. This notice is issued without prejudice to further show cause notice for the period 2016-17 and 2017-18 (upto June 2017), as and when financial records are submitted by the assessee or the information is available to the department from other sources. This notice is issued without prejudice to any other action that may be taken against the said assessee under the Finance Act, 1994/Central Excise law and/or any other law for the time being in force in India.


Joint Commissioner,
CGST & Central Excise
Aurangabad

F. No. V(ST)15-79/Adj/JC/2020-21
Aurangabad, dated 28/12/2020

BY REGD POST/MAIL

To,
M/s ASHIRWAD CONSTRUCTION
GARSOLI, RENAPUR, LATUR

Copy to -1. The Deputy Commissioner, CGST & Central Excise, Nanded Division, Nanded.
2. The Superintendent, CGST & Central Excise, **Latur Urban Range**, Nanded Division.