



माल और सेवाकर के आयुक्त का कार्यालय,

Office of the Commissioner of Goods & Services Tax (GST)

एन -5, टाउन सेंटर, सिडको, औरंगाबाद - 431003

N-5, Town Centre, CIDCO, Aurangabad - 431003

फोन न. 0240-2484975

ईमेल आईडी:cexauran@excise.nic.in

फैक्स न. 0240 -

2483303

DIN- 20201266VJ0000444F7B

SHOW CAUSE-CUM-DEMAND NOTICE
(Sr. No. 20/ST/TPI/Commr./2020-21 dated 22.12.2020)

ANWAR AHMED, M/S ANWAR AHMAD GULAM NABI situated at **R.S.AGENCY MAIN ROAD KANDHAR LOHA ROAD KANDHAR NANDED MAHARASHTRA** (hereinafter referred to as "the assessee"), holding Service Tax Registration No AIWPG3752BST001 is engaged in the providing various taxable services covered under the Finance Act, 1994 (hereinafter referred to as "the Act").

2. Whereas Value of services as declared by the assessee in Income Tax Return (ITR) and TDS data (Amount paid to the assessee by various parties and Income Tax Deducted at Source by such payers as reflected in Form 26AS under Section 194C, 194H, 194I & 194J of Income Tax Act, 1961), obtained from the Income Tax Department for the **FY 2014-15,2015-16 and 2016-17** was found that assessee neither declare the taxable amount in ST-3 returns nor paid the taxable amount. This indicates suppression of the taxable value by the assessee in Form ST-3 and non-payment/evasion of service tax. It appears that the differential Service Tax, as indicated in the table in para 7.1 below, is now liable to be paid by the assessee.

3. Further, during the investigation, the Superintendent, CGST & Central Excise, Nanded Rural Range, vide their office letter/ email F. No. R-Ned Rural/57/TPI/2018-19 dt. 24.08.2019, 03.01.2019, 15.03.2019,01.05.2019,28.08.2019,04.02.2020,26.02.2020,14.07.2020 and 23.10.2020 requested the assessee to submit relevant / relied upon documents for verification and for furnishing reconciliation in aforesaid cases.

4. Further, inspite of repeated requests vide letters / telephonic reminders, the assessee neither submitted the reconciliation data/requisite information which was called for nonpayment of differential amount of Service Tax along with applicable interest and penalty, for **FY 2014-15,2015-16,2016-17**. Therefore, it appears that the assessee was not interested in submitting the

financial records and 26 AS Statement for the 2014-15,2015-16 and 2016-17. It is also a matter of record that inspite of repeated requests they have not provided details and documentary evidence to reconcile the differences in taxable values. 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 differential value i.e. difference in value as per ITR / TDS data 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 share such correct information with the department.

5. Further it appears from the registration of the assessee under Finance Act, 1994 (Service Tax) that the activity carried out by the assessee falls under the category of service as defined under Section 65B(44) of the Finance Act, 1994. It also appears that the assessee has not paid service tax **during FY 2014-15,2015-16 and 2016-17** yet, the assessee is not coming forward to explain the difference in the value of services provided as per ITR/TDS, as mentioned in Para 4.

6. This Show Cause Notice is therefore being issued, for demand of differential service tax on the basis of values of services determined from the Third party ITR / TDS information available for **F Y 2014-15,2015-16 and 2016-17.**

7.1 Further, the higher of the value of services provided as declared in ITR for FY 2014-15,2015-16 and 2016-17 (AY 2015-16),(AY 2016-17) and (AY2017-18) respectively net value of services paid by various parties as indicated in form 26AS i.e. **Rs 5,90,67,311/-, 5,10,66,427/- and 3,66,28,167/-** respectively is being considered as consideration received by the assessee towards providing the said taxable services during **FY 2014-15, 2015-16 and 2016-17** and is thus to be considered as value of taxable services provided during the relevant period. 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 Service Tax Rules 1994(herein after referred to as Rules), the assessee was required to pay service tax on the above said value at a rate specified in Section 66B of the Act, as applicable during the relevant period, on monthly / quarterly basis, to the credit of the Central Government. Thus, it appears that the assessee has short-paid/not-paid Service Tax of **Rs 73,00,719/-** on differential value of **Rs 5,90,67,311/- 74,04,632** on differential value of 5,10,66,427 and 54,94,225/- on differential value of 3,66,28,167 as detailed hereunder **also enclosed as Annexure - 'A' of this Notice. : - (Rs. in actuals)**

Year	Taxable receipts on basis of B/S, ITR / 26AS (Higher of ITR/26AS/ Balance Sheet)	Taxable Value declared in ST-3	Difference in Taxable Value (Col 2-3)	Differential Service Tax payable
(1)	(2)	(3)	(4)	(5)

2014-15	5,90,67,311	0	5,90,67,311	73,00,719
2015-16	5,10,66,427	0	5,10,66,427	74,04,632
2016-17	3,66,28,167	0	3,66,28,167	54,94,225
TOTAL	14,67,61,905	0	14,67,61,905	2,01,99,576

7.2 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 the Section 70(1) of the Finance Act 1994 read with the provisions of Rule 7 of the Service Tax Rules,1994 which they have failed to do. Thus, the assessee has suppressed from the Department, net amount of **Rs. 14,67,61,905 /-** charged/collected by them, as consideration for providing the taxable services, involving service tax liability of Rs. 2,01,99,576/- with an intent to evade the payment of said service tax, during the financial year **2014-15,2015-16 and 2016-17.**

8. Whereas from the foregoing, it appears that the assessee **ANWAR AHMED, M/S ANWAR AHMAD GULAM NABI KANDHAR NANDED** has contravened the following provisions of the Finance Act, 1994, and rules made there under:-

- I. Section 68(1) of the said Act read with Section 66B of the Act read with Rule 6 of the Rules, as applicable during the relevant period, in as much as they failed to pay the appropriate Service Tax for the financial year 2014-15,2015-16 and 2016-17 on the due dates as prescribed.
- II. Section 70(1) of the Act read with Rules 7(1), 7(2) & 7(3) of the Rules, in as much as they have failed to assess the service tax due, on the services received by them and also failed to furnish prescribed ST-3 Returns in prescribed time;
- III. Rule 5A(2) of the Service Tax Rules. 1994 provides that -:

Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-

- i. the records maintained or prepared by him in terms of sub-rule (2) of rule 5;
- ii. the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and
- iii. the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within reasonable time not

exceeding fifteen days from the day when such demand is made.

9. Further, it appears that the service tax liability of **Rs. 2,01,99,576/-** 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 filing 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 ITR / TDS information received from the Income Tax Department, 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, since they have obtained service tax registration. 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. 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, 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. 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 Chapter V of the Finance Act 1994 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 are liable for payment of a penalty under Section 77(1) of the Act.

10. Further, it appears that non declarance of taxable values in the ST-3 returns as appeared ITR / TDS values for FY 2014-15,2015-16 and 2016-17 resulting in non payment of Service Tax, these are reasonable grounds to allege that the assessee has also suppressed the correct values of taxable services for FY2016-17 onwards. The assessee was also asked to furnish information in respect of the period FY 2017-18 (upto June 2017).

11. 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 issued on the basis of data available to the department. This show cause notice covers period period from 2014-15, 2015-06 and 2016-17 .

12. This notice is issued without prejudice to further Show Cause Notice for the period,2017-18 up to June 2017 as and when financial records are submitted by the Assessee or the information is available to the department from an official source. This notice is issued without prejudice to any other action that may be taken against the said noticee under the Finance Act, 1994 / Central Excise law and / or any other law for the time being in force in India.

13. Further the period of five years as mandated under section 73 of the Finance Act,1994, was extended till 31st December - 2020 in terms of Section 6, Chapter V of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 read with Notification CG-DL-E-30092020-222154 dated 30.09.2020 issued under F. No. 450/61/2020-Cus.IV(Part-1).

14. Now therefore, the assessee, **ANWAR AHMED, M/S ANWAR AHMAD GULAM NABI** situated at **R.S.AGENCY MAIN ROAD KANDHAR LOHA ROAD KANDHAR NANDED MAHARASHTRA** is hereby called upon to show cause to the **Commissioner, CGST Central Excise, having office at 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 Rules made there under, with an intent to evade payment of Service Tax.
- b. Service Tax amounting to Rs. 2,01,99,576/- (Including Education Cess, Secondary & Higher Education Cess, Krishi Kalyan Cess and Swatch Bharat Cess) Should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 for not paying Service Tax on taxable services provided by them, during the financial year **2014-15, 2015-16 and 2016-17** as detailed above;
- c. Interest on the aforesaid tax amount, at appropriate rate, should not be charged & recovered from them as specified under Section 75 of the Finance Act, 1994 for FY **2014-15**.
- d. Penalty under Section 77 of the Act, should not be imposed on them for failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under, failure to produce information and documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made there under; failure to pay the tax for the period from April 2014 to March 2017.
- e. Penalty under Section 78 of the Finance Act, 1994,equal to the tax evaded

as mentioned in (b) above, should not be imposed on them for suppressing the material facts from the Department, with an intention to evade payment of service tax for the period from April, 2014 to March 2017, which will be further reduced to 15 percent if tax, interest and such reduced penalty is paid within 30 days of issuance of this notice.

- f. Late fee under section of 70 of the Finance Act 1994 read with Rule 7C of Service Tax Rules 1994, should not be imposed on them for non-filing/late filing of ST-3 returns.

15. The assessee is 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.

16. 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.

17. 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.

18. The document relied upon in this case is the ITR/TDS data for the year 2014-15 and letters email vide F. No. R-Ned Rural/57/TPI/2018-19 dt. 24.08.2019, 03.01.2019, 15.03.2019 01.05.2019,28.08.2019 04.02.2020,26.02.2020 14.07.2020 and 23.10.2020 issued to the assessee and ST3 for relevant period, **enclosed as Annexure - 'B' of this Notice.**

All the relied upon documents are available with the assessee and as such, these are not enclosed with this notice.

(AVINASH THETE)
Commissioner
CGST & Central Excise
Aurangabad

Aurangabad 22.12.2020

BY EMAIL/ REGD POST

To,

**ANWAR AHMED, M/S ANWAR AHMAD GULAM NABI situated at
R.S.AGENCY MAIN ROAD KANDHAR LOHA ROAD KANDHAR NANDED**

MAHARASHTRA Mob No. - 9860577786 / 02462 - 240086

Email - rsagency.kandhar@gmail.com

Copy to -

- 1) The Superintendent, CGST & Central Excise, **Nanded Rural Range**, Nanded Division.
- 2) The Deputy Commissioner, CGST & Central Excise, Nanded Division.
- 3) The Superintendent (Computer) Hqrs for uploading on the website.

ANNEXRURE – A

Annexure –A to Show Cause Cum Demand Notice Sr. No. 20/ST/TPI/Commr/2020-21 dated,/...../2020 issued by the Commissioner, CGST & Central Excise, Aurangabad to, M/S ANWAR AHMAD GULAM NABI situated at R.S.AGENCY MAIN ROAD KANDHAR LOHA ROAD KANDHAR NANDED MAHARASHTRA

Year	Taxable receipts on basis of B/S, ITR / 26AS (Higher of ITR/26AS/ Balance Sheet)	Taxable Value declared in ST-3	Difference in Taxable Value (Col 2-3)	Differential Service Tax payable + SHED Cess /SBC+ED. Cess/KKS
2014-15	59,067,311	0	59,067,311	7,300,720
2015-16	51,066,427	0	51,066,427	7,404,632
2016-17	36,628,167	0	36,628,167	5,494,225
TOTAL	146,761,905	0	146,761,905	20,199,577

TST/21/11/2020
Inspector
CGST & Central Excise
Nanded Rural Range

21/12/2020
Superintendent
CGST & Central Excise
Nanded Rural Range

ehand
Dy. Commissioner
CGST & Central Excise
Nanded Division, Nanded

PAN Number	Business Name (ITR)	Assessee Status Description	Date of Birth / Date of Registration / Date of Incorporation	ITR Address	Form ID	Mobile Number	BUS_CODE1	BUS_CODE1_DESCRIPTION	BUS_CODE2_DESCRIPTION	BUS_CODE3_DESCRIPTION	Sales/Gross Receipts From Services (Value from ITR)
AIWPG3752B	ANWAR AHMED GULAM NABIO	INDIVIDUAL	1/12/1980	00 MAIN ROAD KANDHAR TQ. KANDHAR Nanded MAHARASHTRA	ITR-4	9665065485	714	Sector: Service Sector - Others	-	-	59,067,311

Service_Tax_Registration_No	Business Name as per Service Tax Registration	Range	ST_Registration_Address	Phone_No_1	Email_id	Gross_Value_Service_Provided (ST Value)	Gross_Value_Service_Received	Duty_Payable_as_per_ST_return	Duty_Paid_as_per_ST_return	Duty_Paid_as_per_NSDL	Difference Between Value of Services from ITR and Gross Value in Service Tax Provided
AIWPG3752BST001	ANWAR AHMED	NANDED RANGE	R.S.AGENCY MAIN ROAD KANDHAR LOHA ROAD KANDHAR Nanded MAHARASHTRA	223748	rsagency.kandhar@gmail.com	-	-	-	-	-	59,067,311