



भारतसरकार / Government of India

वित्तमंत्रालय, राजस्वविभाग/Ministry Of Finance, Department Of Revenue

OFFICE OF THE COMMISSIONER, CENTRAL GOODS & SERVICE TAX, GST BHAVAN,
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DIN 20201266VJ000000E552

SHOW CAUSE-CUM-DEMAND NOTICE

(Sr. No. 182/ST/TPI/JC/NED/LTR/20-21 dated 28.12.2020)

M/s SWASTIK CONSTRUCTION, registered under Service Tax with Registration No. AMFPP3667HSD002 at the address M/S SWASTIK CONSTRUCTION PLOT NO A 38, MIDC LATUR 413512 ; (hereinafter referred to as "the assessee"), are engaged in providing services including works contract services which are taxable services covered under the Finance Act, 1994 (hereinafter referred to as "the Act").

2.1 Whereas information regarding Value of Net Turnover of Works Contracts and Ongoing Leasing provided, 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 Works Contracts Services (both being taxable services under Finance Act, 1994) to its customers. However, on going through the records available, it is observed that the assessee has not filed service tax return for the period 2015-16 nor paid any service tax for the services provided by them.

2.2 In order to further investigate the matter and allow the assessee to present the facts, emails dated 23.12.2020 were issued to the assessee, calling for relevant / relied upon documents for verification and for furnishing the reason for non payment of service tax.

3. In spite of mails mentioned in aforesaid Para, the assessee neither submitted the requisite information which was called for nor paid the Service Tax along with applicable interest and penalty; for FY 2015-16. It appears that the assessee was not interested in submitting the financial records and reconciliation as stated above. 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 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 from the MAHAVAT data that the assessee is engaged in providing Works Contract 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 information for FY 2015-16.

6.1 For the purpose of this notice, the Value of Net Turnover of Works Contracts and Ongoing Leasing 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	5	6
2015-16	4,04,93,964/-	14.5%	58,71,625/-
Total			58,71,625/-

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 to 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 has not paid Service Tax for the period 2015-16, as shown at column no. 6 of the Table above on the value as 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. 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 officer authorized in this regard, various records, within reasonable time not exceeding fifteen days, relevant records. 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, situated at , have contravened the following provisions of the Finance Act, 1994, and rules made thereunder:-