

File No: GEXCOM/ADJN/ST/JC/189/2020-ADC/JC-II-O/o COMMR-CGST-AURANGABAD



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-20201266VJ000002070F

SHOW CAUSE-CUM-DEMAND NOTICE
(Sr. No. 158/ST/TPI/JC/AU/2020-21 dated 28/12/2020)

M/s. VISHAKHA ENTERPRISES (PROP.BALKRISHNA MANOHARRAO MULEY), FLAT NO. A5, G.NO. 170/P, ASTAVINAYAK NAGAR, HARSUL, AURANGABAD, MAHARASHTRA (hereinafter referred to as "the assessee"), holding Service Tax Registration No. **AJAPM1937BST001** is engaged in 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** was found to be in excess of the value of services declared by the assessee in Form ST-3 for **FY 2014-15 & 2015-16** and whereas it was observed that, the net amount paid to the assessee (including TDS deducted but excluding the Service Tax amount, if any) by various parties was in excess of the value of services provided, as declared by the assessee in the ST-3 returns for **FY 2014-15 & 2015-16**. This indicates suppression of the taxable value by the assessee in Form ST-3 and short-payment/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, **City Range-II**, Aurangabad Urban Division vide their office letter F.No. F.No.CR-III/Third Party Data/2020-21 Aurangabad, the 29.10.2020 dtd. 29.10.2020 requested the assessee to submit relevant / relied upon documents for verification and for furnishing reconciliation in aforesaid cases.

4. Further, in spite 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 **FY 2014-15, 2015-16 & 2016-17**. It is also a matter of record that in spite 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 vis-à-vis taxable amount shown in ST-3 returns, 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 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 **FY 2014-15 & 2015-16**.

7.1 Further, the higher of the value of services provided as declared in ITR for FY 2014-15 (AY 2015-16), net value of services paid by various parties as indicated in form 26AS is being considered as consideration received by the assessee towards providing the said taxable services during **FY 2014-15 & 2015-16** 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.1,81,80,916/-** on differential value of **Rs.12,99,40,805/-** 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/	Taxable Value declared in ST-3	Difference in Taxable Value (Col 2-3)	Differential Service Tax payable
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	26AS/ Balance Sheet)			
(1)	(2)	(3)	(4)	(5)
2014-15	8,26,62,625/-	5,17,98,112/-	3,08,64,512/-	38,14,853/-
2015-16	9,90,76,293/-	0	9,90,76,293/-	1,43,66,062/-
		TOTAL :	12,99,40,805/-	1,81,80,916/-

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 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, net amount of **Rs.12,99,40,805/-** charged/collected by them, as consideration for providing the taxable services, involving Service Tax liability of **Rs.18180916/-** with an intent to evade the payment of said Service Tax, during the financial year **FY 2014-15 & 2015-16**.

8. Whereas from the foregoing, it appears that the assessee 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 Service Tax Rules, 1994, 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** on the due dates as prescribed.
- II. 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 received by them and also failed to furnish prescribed ST-3 Returns with correct details 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.1,81,80,916/-** 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. The assessee also suppressed the material facts from the knowledge of the Department with intent to evade Service Tax and therefore liable for payment of penalty under Section 78 of Finance Act, 1994.

10. Further, it appears the difference in value of taxable values declared by the assessee in the ST-3 returns vis-à-vis ITR / TDS values for **FY 2014-15 & 2015-16** resulting in short payment of Service Tax, these are reasonable grounds to allege that the assessee has also suppressed the correct values of taxable services for **FY 2014-15 & 2015-16**. The assessee was also asked to furnish information in respect of the period for **FY 2016-17 & 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, does not cover period from **FY 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.

12. This notice is issued without prejudice to further Show Cause Notice for the period **2016-17 & 2017-18 (Upto 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 assessee 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, **M/s. VISHAKHA ENTERPRISES (PROP.BALKRISHNA MANOHARRAO MULEY), VISHAKHA ENTERPRISES (PROP.BALKRISHNA MULEY) FLAT NO. A5 G.NO. 170/P ASTAVINAYAK NAGAR HARSUL AURANGABAD MAHARASHTRA** is 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 Rules made there under, with an intent to evade payment of Service Tax.
- b. Service Tax amounting to **Rs.181,80,916/-** (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 **FY 2014-15 & 2015-16**, 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 & 2015-16**.
- 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 **FY 2014-15 & 2015-16.**

- 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 **FY 2014-15 & 2015-16**, 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 **FY 2014-15 and 2015-16** and letters vide F.No. **F.No.CR-III/Third Party Data/2020-21 Aurangabad, the 29.10.2020 dtd. 29.10.2020** issued to the assessee and ST3 for relevant period.

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

Sunil Bhimrao Deshmukh

Joint Commissioner
CGST & Central Excise

Aurangabad

F. No.

Aurangabad, dated 28/12/2020

BY REGD POST/MAIL

To,

M/s. VISHAKHA ENTERPRISES (PROP.BALKRISHNA MANOHARRAO MULEY),

**VISHAKHA ENTERPRISES (PROP.BALKRISHNA MULEY) FLAT NO. A5
G.NO. 170/P ASTAVINAYAK NAGAR HARSUL AURANGABAD
MAHARASHTRA**

Copy to -1. The Asstt. Commissioner, CGST & Central Excise, A'bad Urban Division, Aurangabad.

2. The Superintendent, CGST & Central Excise, City Range-III, A'bad Urban Division.

