



माल एवं सेवाकर (जी.एस.टी.) के आयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF GOODS AND SERVICES TAX (GST)

एन-5 टाउन सेंटर, सिडको, औरंगाबाद - 431003

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BY RPAD /E-Mail

**DIN**

**20201266vj0000217254**

24/12/2020

To  
M/s Avinash Enterprises  
(Prop. Chaure Baburao Kadubal)  
RH 13/1/FDC  
HSG society Bajaj Nagar,  
Aurangabad

**SHOW CAUSE CUM DEMAND NOTICE**

(Sr.No. 69 /ST/TPI/JC/AR/WR-1/2020-21 dated .12.2020)

M/s Avinash Enterprises, (Prop. Chaure Baburao Kadubal) RH 13/1/FDC HSG society Bajaj Nagar, Aurangabad holding Service Tax Registration No.AERPC1698HST001 (hereinafter referred to as "the noticee") are engaged in providing taxable services covered under the Finance Act, 1994 (hereinafter referred to as "the Act").

**2.** As per the Third Party Data of Income Tax Department viz. ITR / TDS data (Sales/Gross receipt from Services) in the Form 26AS, it was observed that the noticee had shown income/receipts of Rs. 6,31,56,639/- for the Financial Year 2014-15 & 2016-17 to the Income Tax Department whereas the noticee had declared to the Service Tax department, the value of service provided for the said period to the tune of Rs.18014073/- only. Accordingly, Superintendent, GST & Central Excise, Aurangabad Rural Div. has issued letters through E-mail/post dated 10.10.2.2020 and asked them to produce relevant documents/records to ascertain the tax liability. However, the noticee failed to do so.

**3.** In view of the above, it is observed that noticee is providing

various taxable services covered under the Finance Act, 1994. The activity carried out by the noticee falls under the category of service as defined under erstwhile Section 65B (44) of Chapter V of the Finance Act, 1944 (hereinafter referred to as the Chapter & Act).

**4.** It appears that the noticee has not paid/short paid Service Tax on taxable value as per the information of third party data received from the Income Tax Department viz. Value from ITR/TDS (Sales/Gross receipt from Services) in the Form 26AS, for the period 2014-15 & 2016-17. Therefore, the service tax due on the said amount is worked out as detailed below.

Financial Year	ITR/TDS Value declared to Income Tax department.	Value to declared to service tax department	Difference in Value	Rate of Service Tax	Service Tax payable in Rs.
1	2	3	4 (2-3)	5	6
2014-15	2,93,20,469/-	85,33,166/-	2,07,87,302/-	12.36%	25,69,311/-
2016-17	3,38,36,171/-	94,80,907/-	2,43,55,264/-	15.00%	36,53,290/-
<b>TOTAL</b>	<b>6,31,56,639/-</b>	<b>1,80,14,073/-</b>	<b>4,51,42,566/-</b>		<b>62,22,600/-</b>

**5.** Further, the Value of Rs.6,31,56,639/- (declared to Income Tax department) being consideration received by the noticee towards providing the various taxable services, is the gross amount charged by the noticee and is thus, considered as value of taxable services provided during the relevant period declared to Service Tax department. Thus, the noticee has suppressed the correct value of services provided from the Service Tax Department. From the above, it appears that the noticee was required to pay the Service Tax amounting to Rs.62,22,600/- on the differential value of Rs.4,51,42,566/- at the rate specified in erstwhile Section 66/66B of the Act, as applicable during the relevant period, on monthly/quarterly basis, to the credit of the Central Government, in view of the provisions of erstwhile Section 68(1) of the Act read with the provisions of erstwhile Rule 6(1) of the Service Tax Rules, 1994.

**5.1** Further, it appears that, the noticee was liable to assess and pay the Service Tax due on the services provided and declare taxable value in the specified Form ST-3 return, on half-yearly basis, as specified in erstwhile Section 70(1) of the Act read with the

provisions of erstwhile Rule 7 of the Service Tax Rules, 1994 but they failed to do so. Thus, the noticee has suppressed the receipts of differential value Rs.4,51,42,566/- from the Department with intent to evade the payment of Service Tax, during the period 2014-15 & 2016-17.

**6.** Whereas from the foregoing, it appeared that the noticee has contravened the following provisions of the Finance Act, 1994, and Rules made there under:-

i) Erstwhile Section 68(1) of the said Act read with erstwhile Section 66/Section 66B of the Act read with erstwhile 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 Financial Year 2014-15 & 2016-17 on the due date as prescribed.

ii) Erstwhile Section 70(1) of the said Act read with erstwhile Rules 7(1), 7(2) & 7(3) of the Service Tax Rules, 1994 in as much as they 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.

iii) Erstwhile Section 69 of the Act read with erstwhile Rule 4 of the Rules, in as much as they failed to amend their Service Tax registration.

iv) 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,-

a) The records maintained or prepared by him in terms of sub-rule (2)

of rule 5;

b) The cost audit reports, if any, under Section 148 of the Companies

Act, 2013 (18 of 2013); and

c) 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.

**7.** It appears that in the regime of self assessment, more reliance is placed on the noticee who has to take every care and ensure that he has correctly assessed and discharged tax liability and followed service tax procedure. However, the noticee had short declared the receipt against provision of services to the Service Tax Department by Rs. 4,51,42,566/- (as detailed in above table) on which they are required to pay the Service Tax. Further, they failed to amend their registration for the taxable services on which service tax was either not paid or short paid. Also they have neither filed ST-3 returns for the services provided for the differential value nor followed service tax procedure. These omissions and commissions on the part of the noticee shows that they have withheld the information which was statutorily required to be declared by them and thus suppressed the material facts with intent to evade payment of Service Tax. Therefore, proviso to erstwhile Section 73(1) of the Finance Act, 1994 is rightly invocable in this case for demanding and recovering the Service Tax not paid/short paid for the extended period along with interest at applicable rates under the provisions of the erstwhile Section 75 of the Finance Act, 1994.

**7.1** Further, it also appears that by their omissions and commissions, the noticee has rendered themselves liable for payment of late fees under the provisions of erstwhile Section 70(1) read with erstwhile Rule 7C of the Service Tax Rules, 1994 for failure to file ST-3 returns for differential value as mentioned above. They are also liable for penalty under erstwhile Section 77(1) (a) of the Finance Act, 1994 for failure to amend Service Tax registration for the services provided for differential value. For the contraventions of the provisions of erstwhile Section 68(1) of the said Act read with erstwhile Section 66/Section 66B of the Act read with erstwhile Rule 6 of the Service Tax Rules, 1994 they are liable for penalty under erstwhile Section 78 of the Finance Act, 1994 for contravention of various provisions of Service Tax law by suppressing of material facts with intent to evade payment of service tax.

**8.** 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 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 & 2016-17. The assessee was also asked to furnish information in respect of the period FY 2015-16 & FY 2017-18( up to June 2017).

9. Further, it also 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 2015-16, & 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. This notice is issued without prejudice to further Show Cause Notice for the period 2015-16 & 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 noticee under the Finance Act, 1994 / Central Excise law and / or any other law for the time being in force in India.

11. 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

**12.** Now, therefore, M/s Avinash Enterprises, (Prop. Chauri Baburao Kadubal) RH 13/1/FDC HSG society Bajaj Nagar, Aurangabad, are hereby called upon to show cause to the Joint Commissioner of Central Goods and Service Tax, Aurangabad having his office at Office of the Commissioner of Central Goods & Service Tax, N-5, Town Centre, CIDCO, Aurangabad within 30 days from the date of receipt of this notice, as to why-

- a) Service Tax of Rs.62,22,600/- (as detailed in the above table) not paid/short paid on taxable services provided by them, during the Financial year 2014-15 as detailed above, should not be demanded and

recovered

from them under the provisions of proviso to erstwhile Section 73(1) of the Finance Act, 1994;

b) Interest at an appropriate rate should not be charged & recovered from

them as specified under erstwhile Section 75 of the Finance Act, 1994;

c) Late fees under erstwhile Section 70(1) of the Act read with erstwhile Rule

7 of the Service Tax Rules, 1994 should not be charged and recovered from

them for failure to file correct return in Form ST-3 during the period.

d) Penalty under erstwhile Section 77 (1) (a) of the Act should not be imposed

on them for failure to amend Service Tax registration.

e) Penalty under erstwhile Section 78 of the Act should not be imposed on

them for suppressing the material facts from the Department, with

intention to evade payment of correct Service Tax for Financial year 2014-15

& 2016-17

**9.** The noticee is required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defence. They are further required to state as to whether they wish to be heard in person, before the case is adjudicated.

**10.** If no cause is shown against the action proposed to be taken, within 30 days of receipt of this notice, or the noticee does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidences available on records, without any further reference to them.

**11.** The documents relied upon in this case are the Value from ITR/TDS data for the year 2014-15 & 2016-17 and letters dated

10.10.2020 as attached herewith.

**12.** 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 the Finance Act, 1994 read with Service Tax Rules, 1994.

Encl:- Annexure-"A" & "B".  
along with Relied upon  
documents.

Sunil Bhimrao Deshmukh  
Joint Commissioner,  
CGST & Central Excise,  
Aurangabad.

Copy to:-1) Asstt.Commr. CGST & C.Ex., Aurangabad Rural Div.  
2) Superintendent (WR-I), GST & C.Ex., Aurangabad Rural  
Div.  
3) Spare/Master copy