

	<b>GOVERNMENT OF INDIA</b> <b>MINISTRY OF FINANCE</b> <b>DEPARTMENT OF REVENUE</b>	
	<b>OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE &amp; SERVICE TAX: VASANT PLAZA, COMMERCIAL COMPLEX, 4<sup>TH</sup> &amp; 5<sup>TH</sup> FLOOR, C.S. NO.1079/2 KH, RAJARAM ROAD, BAGAL CHOWK, KOLAHAPUR 416001</b>	
	<b>Ph. No. (0231)-2530230</b>	<b>Fax No.(0231)- 2530233</b>
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### **SHOW CAUSE CUM DEMAND NOTICE**

On the basis of intelligence gathered by the Officers of Central Excise, Anti-Evasion, Kolhapur Commissionerate, that M/s. Uranus Realtors Private Limited, 12/852-1, Naik's Hotels, Naik Nagar, Kagwade Mala, Ichalkaranji, -416115 (hereinafter referred to as 'the service provider'), having Service Tax Registration No-AABCU1948BSD001 and engaged in providing Construction of Complex/Residential service have not paid service tax on the total taxable value so billed, investigations were initiated against the service provider in the month of March 2013.

2. In order to verify the above position, the officers called for the relevant information/documents. Scrutiny of the documents produced by them vide their letters dated 07.03.2013 & 09.07.2013, revealed that the service provider is a Private Limited company and is engaged in providing Construction of Complex service to various clients. It is also observed from the records that the service provider has been registered with Service Tax, Ichalkaranji Division having STC No. AABCU1948BSD001 dated 08.05.2012 under the categories 'Construction of Residential/Complex Service' and 'Transport of Goods by Road Service'. On further scrutiny it is observed that the service provider has filed ST-3 Returns only for the period April 2012 to June, 2012 on 10.11.2012.

3. To ascertain whether the service provider has paid service tax on the entire taxable amount received/billed to his clients, this office reconciled all records produced by the service provider viz., ST-3 Return (April 12 to June 12), P&L Account & Ledger extracts for the year 2011-12, 2012-13, statement showing month wise/party wise booking advances received by them from their customers for the said Financial years, payment particulars, etc. During reconciliation, it is found that the service provider have been providing 'Construction of Residential/Complex Service' from May 2011 onwards but has got registered themselves with the service tax department only on 08.05.2012 and started paying service tax from 06.09.2012 onwards. It is also observed from the ST-3 Return for the period April to June 2012 that they have not considered total taxable value for the purpose of payment of service tax. From the documents provided by the service provider, it is found that they have received/billed total taxable value of Rs. 1,30,13,102/- for the period April, 2011 to March 2012, on which service tax payable is Rs. 3,35,087/- (Basic Service Tax Rs. 3,25,328/-, Education Cess of Rs. 6,507/- and SH. Ed. Rs. 3,253/-) and for the period April 2012 to March 2013, the total amount billed/received is Rs. 5,35,45,731/- on which service tax payable is Rs. 16,54,563/- (Basic Service tax Rs. 16,06,372/-, Education Cess Rs. 38,634/- and SH. Education Cess of Rs. 16,064/-). Out of the total service tax payable of Rs. 19,89,650/-, the amount of service tax of Rs. 6,56,077/- is paid by the service provider on its own but after due dates. The amount of Rs. 13,33,573/- is also paid by the service provider after due dates but on persuasion by the department officers. Regarding interest liabilities for the aforesaid periods, the service provider paid interest amount of Rs. 1,31,850/-.

4. To bring the above facts on records, Statement of Shri. Parshant D. Bhadargade, Director of M/s Uranus Realtors Private Limited was recorded on 24.07.2013, under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. In his statement, Shri. Parshant D. Bhadargade stated that the firm is engaged in Construction of Residential Complex since August 2010; that till April 2011, they had not received any advances from their customers, therefore there was no service tax liability; that from May 2011 onwards they started receiving advances, accordingly they should have paid service tax; that the concern person looking after service tax matter was not well verse with service tax laws, failed to compute the exact service tax liability and pay the same; that the total service tax liability for the year 2011-12 & 2012-13 was worked out in the month of September 2012 and accordingly they started paying service tax; that in the month of March 2013, Departmental Officers visited their premises and took up the issue; that the total service tax liabilities for the period from May 2011 to March 2012 & April 2012 to March 2013 works out to Rs. 3,35,087/- & Rs. 16,54,563/- totaling to Rs. 19,89,650/-. Out of which Rs. 6,56,077/- was paid by them on their own, but after due dates; that the remaining amount of Rs. 13,33,573/-, is also paid by them but after pointing out by the department and after due dates; that the details of calculation sheet along with statements showing month wise break up of amounts received/billed against booking of residential units for the aforesaid period is enclosed herewith; that as per existing law, they are paying service tax on all the consideration received prior to issue of completion certificate by the authority competent to issue such certificate; that it is true that inspite of taking Service Tax registration on 08.05.2012, the service tax remained to be paid; that however immediately on pointing out by the Departmental Officers, they have paid the entire service tax of Rs. 19,89,650/- (May 2011 to March 2013) along with Interest of Rs. 1,31,850/-; that it is also true that they have not filed ST-3 Returns for the period April 2011 to March 2012; that as stated above the reason for delayed payment of service tax was because the staff looking after the service tax was not well aware of the provisions of service tax laws.

5. Further, a supplementary statement of Shri. Parshant D. Bhadargade, Director of M/s. Uranus Realtors Private Limited was recorded on 27.08.2013, under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. In his statement, Shri. Parshant D. Bhadargade stated that for collecting advances they are not raising invoices/bills, instead raising demand notes; that while collecting advances from their customers, they are not including service tax amount in the demand notes, but recovering/collecting the same separately over and above the advance amount; that this practise is followed right from the beginning; that the booking deposits are carried forward in the balance sheet till execution of sale deeds.

6. From the foregoing paras, it appears that the service provider has provided Construction of Complex services to their clients for which they have billed total taxable amount of Rs. 32,53,276/- (after allowing abatement of 75% vide Notification No. 1/2006-ST, dated 01.03.2006) for the period April 2011 to March 2012 and Rs. 1,33,86,433/- (after allowing abatement of 75% vide Notification No. 26/2012-ST, dated 20.06.2012 as amended) for April 2012 to March 2013. The said service appears to be covered under the category of **"Construction of Complex"** services falling under Section 65(105)(zzzh) of the Finance Act, 1994 (for the period upto 30.06.2012) and under Section 66 E (b) of the Finance Act, 1994 (for the period from 01.07.2012 to 31.03.2013). Also, the said services provided by the service provider do not fall under Negative List as prescribed under Section 66D of the Finance Act, 1994. The total service tax payable is Rs. 19,89,650/- (Rs. 3,35,087/- for the period April 2011 to March 2012 & Rs. 16,54,563/- for the

period April 2012 to March 2013) which they have charged and collected from their customers. The detail worksheet of service tax payable and paid is attached as Annexure A to this SCN.

7. From the foregoing, it appears that the service provider has contravened the following provisions of Chapter V of the Finance Act, 1994, Service Tax Rules, 1994 (in short, 'STR, 1994') and Point of Taxation Rules, 2011 as amended.

(i) Section 67(1)(i) of the Finance Act, 1994, in as much as they have failed to determine the correct taxable value.

(ii) Section 68(1) of the Finance Act, 1994 read with Rule 6(1) of the STR, 1994 and Rule 6 of Point of Taxation Rules, 2011, in as much as, they have failed to pay the service tax on the service provided by them to their clients, in the manner and at the rate as provided under the said provisions.

(iii) Section 69(1) of the Finance Act, 1994 read with Rule 4(1) of the STR, 1994, in as much as, they have failed to make application for registration to the Superintendent of Central Excise, with in such time and such manner and in such form as may be prescribed under the said provisions.

(iv) Section 70(1) of the Finance Act, 1994 read with Rule 7(1) of S. Tax Rules, 1994 in as much as they failed to file the ST-3 return on due dates.

8. Further, from the foregoing paras, it appears that M/s. Uranus Realtors Private Limited was required to get registered themselves with Service Tax department within a period of thirty days from the date on which the service tax under Section 66/66B of Finance Act, 1994 is levied. Further as M/s. Uranus Realtors Private Limited is a Private Limited company, was required to pay the service tax on 5<sup>th</sup> day of the month, immediately following the month in which the service is deemed to be provided as per the rules framed in this regard and file the ST-3 Returns thereof to the department on half yearly basis. However, they have neither got registered them self nor paid service tax on due date and filed any ST-3 Returns. Further, in the said case the service provider has provided the service, raised demand notes, charged and collected service tax but not deposited the service tax amount to the Government Account on due dates. It is only after the investigations were taken up by the Department, the service provider deposited the service tax amount. Thus it appears that M/s. Uranus Realtors Private Limited, have evaded the payment of Service tax of Rs. 19,89,650/- pertaining to the period from April, 2011 to March-2013 by suppressing the material facts in as much as no details of the service provided and the charges received by them was informed to the department. Therefore, the service provider has contravened various provisions of the Finance Act, 1994 & Rules made there under as brought out in this Notice with intend to evade payment of Service tax and as such proviso to sub section (1) of Section 73 of the Finance Act, 1994 appears applicable in this case. Thus, the service provider appears to be liable to penalty under Sections 70, 76, 77 & 78 of the Finance Act, 1994 and is also liable to pay interest as per Section 75 of the Act, 1994.

9. NOW, THEREFORE, M/s. Uranus Realtors Private Limited, 12/852-1, Naik's Hotels, Naik Nagar, Kagwade Mala, Ichalkaranji, -416115 are hereby called upon to show cause to the Additional Commissioner, Central Excise & Service Tax, Kolhapur Commissionerate, 'Vasant Plaza' Commercial complex, 4<sup>th</sup> & 5<sup>th</sup> Floor, C.S. No.1079/2KH, Rajaram Road, Near Bagal Chowk, Kolhapur-416 003 on receipt of this notice within thirty days as to why:

(i) Service Tax amounting to Rs. **19,89,650/-** (Rs. **3,35,087/-** for the period from April 2011 to March 2012 and Rs. **16,54,563/-** for the period April 2012 to March. 2013) as detailed in Annexure A, should not be

demand from them under the provisions of proviso to Section 73(1) of the Finance Act, 1994; service tax amounting to Rs. **19,89,650/-** paid by the service provider subsequent to the due date of Payment of service tax, vide various GAR 7 Challans should not be appropriated against the above demand.

(ii) Interest on the Service Tax amount so determined, should not be recovered from them under Section 75 of the Finance Act, 1994; Interest amounting to Rs. **1,31,850/-** for the period from April 2011 to March 2013 paid by the service provider, vide various GAR 7 Challans should not be appropriated and adjusted against the above demand.

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 *ibid* for contravention of the provisions of Sections 68 (1) read with Rule 6 (1) of the Service Tax Rules, 1994 and Rule 6 of the Point of Taxation Rules, 2011 for non payment of service tax on due dates.

(iv) Penalty should not be imposed upon them under section 77 (1) of Finance Act, 1994 *ibid* for failure to take registration in accordance with section 69 or rules made under this chapter.

(v) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994, as amended *ibid* for failure to determine the correct taxable value.

(vi) Penalty/Late fee should not be imposed upon them under Section 70 of the Finance Act, 1994, as amended *ibid* for failure to file their returns on the due dates.

(vii) Penalty should not be imposed upon them under Section 78 as amended, of the Finance Act, 1994 for suppression of the facts of non Payment of Service tax and for contravention of the provisions of the Finance Act and rules made there under, as brought out in this Notice, with the intent to evade payment of service tax.

10. M/s. Uranus Realtors Private Limited, 12/852-1, Naik's Hotels, Naik Nagar, Kagwade Mala, Ichalkaranji, -416115 are hereby asked 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 asked to state whether they wish to be heard in person before the case is adjudicated. If no such mention is made in their written replies, it would be presumed that they does not wish/desire to be heard in person.

11. If no reply to the said action proposed to be taken against them are received within 30 days of the date of receipt of the show cause notice and/or if they do not appear before the said adjudicating authority when the case is posted for hearing, the case will be decided, *ex-parte*, on the basis of the evidences available on the records without any further reference to them.

12. This notice is issued without prejudice to any other action against the service provider or any other person, under the provisions of this Act and the Rules made thereunder or under any other Law for the time being in force in India.

13. The sections / rules invoked in this Show Cause Notice are protected by Section 38 A of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

14. The list of the documents/records/statements relied is as under

- i) Statement of Shri. Parshant D. Bhadargade, Director of M/s Uranus Realtors Private Limited recorded on 24.07.2013.
- ii) Statement of Shri. Parshant D. Bhadargade, Director of M/s Uranus Realtors Private Limited recorded on 27.08.2013.
- iii) ST-3 Return for the period April 2012 to June 2012.
- iv) P/L account for the period 2011-12, Trial balance for the year 2011-12 & 2012-13 and statement showing Monthly wise break up of taxable amount against booking of residential unit for the period 2011-12 and 2012-13.

Encl: Annexure A

(Mankoskar SurendraKumar  
Chandrakant Rao)

Additional Commissioner,  
Central Excise,  
Kolhapur Commissionerate,

Kolhapur.

F. No.

**BY RPAD**

To  
M/s. Uranus Realtors Private Limited,  
12/852-1, Naik's Hotels, Naik Nagar,  
Kagwade Mala, Ichalkaranji, -416115

Copy to-

- 1) Deputy Commissioner, Central Excise, Ichalkaranji Division.
- 2) Superintendent, Central Excise, Anti Evasion-II, Kolhapur Comm'te