
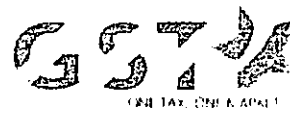


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:qaahmedabad2@gmail.com">qaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-62/OA/2022

DIN-20230864WT0000001E16

आदेश की तारीख/Date of Order: - 23.08.2023  
जारी करने की तारीख/Date of Issue :- 23.08.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

संयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 28/JC/ LD /GST/2023-24**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(3) उक्त अपील की प्रति।

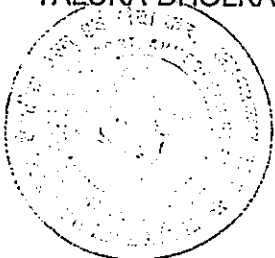
(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. AE/ENQ/GST/528/2021 dated 28.02.2023 issued to M/s Jay Cotex, 103A, AT-TRANSAD, TALUKA-DHOLKA, AHMEDABAD, GUJARAT-382225.





## BRIEF FACTS OF THE CASE

M/s. Jay cotex bearing GSTN - 24AAIFJ5362N1ZZ having principal place of business as 103A, AT-TRANSAD, TALUKA-DHOLKA, AHMEDABAD,GUJARAT-382225 is a partnership firm engaged in ginning activity on Raw cotton covered under HSN 52010011 as per the details available from the GST Registration (hereinafter referred to as "the taxpayer" for the sake of brevity).

2. As per the inputs of information gathered from reliable sources and passed on by the Joint Commissioner (AE), it was found that M/s. Jay Cotex (GSTIN 24AAIFJ5362N1ZZ) situated at 103A,TransadRoad,Taluka: Dholka, Dist. Ahmedabad-382225 is a partnership firm, engaged in ginning activities on raw cotton, but they are not paying any GST on RCM basis. Accordingly, an inspection (INS-01, DIN-202110664WT0000084335) was undertaken of the principal place of business of taxpayer on 21.06.2021 under Section 67(1) of the CGST Act, 2017 and during inspection a panchnama has been drawn and some documents has been taken from the premises.

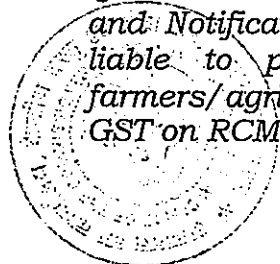
3. On verification of documents, summons were issued to the taxpayer on dated 22.06.2021 under Section 70 of the CGST Act, 2017 to appear in person on 28.06.2021 and no response was made by the taxpayer. Another summons was issued to the taxpayer on 09.07.2021 to appear in person on 26.07.2021 and in response to the said Summons, Partner of M/s Jay Cotex (Mr. Hasmukhbhai Patel) was present himself to give the statement on 27.07.2021 (RUD-I). A statement of Shri Hasmukhbhai Patel was recorded. He, in reply of questions of the above said statement, stated as under:-

*Q. :Please examine the details of purchases of raw cotton made by you directly from the farmers/agriculturists and/or unregistered traders as provided by you during the above said Panchnama proceedings. Please confirm the correctness of the value of such purchases as contained in these documents and summarized in the following chart given below.*

S. No.	Year	Amount (in Rs.)
01.	01.07.2017 to 31.03.2018	21,03,05,108.5/-
02.	2018-19	33,72,64,604.25/-
03.	2019-20	12,35,53,331.5/-
04.	2020-21	12,58,48,844/-
05.	01.04.2021 to 31.05.2021	2,66,41,235.63/-

*A :Yes, I have examined the above figures of unregistered Purchase of raw Cotton from the farmers/agriculturists during the period from 01.07.2017 to 31.05.2021 submitted by me under the said Panchnama 21.06.2021 and confirm the correctness of the values as shown in the above chart.*

*Q. : I am showing you a Notification No. 04/2017-CT(Rate) dated 28.06.2017 and Notification No. 43/2017 dated 14.11.2017, according to which you are liable to pay GST on the raw Cotton purchased directly from the farmers/agriculturist on RCM basis. Do you agree that you have not paid any GST on RCM basis.*



A. :Yes, I agree. We have not paid GST on RCM basis on the raw Cotton purchased directly from the farmers/agriculturist for during the period from 01.07.2017 to 31.03.2021. However, we have paid GST on RCM basis on the raw Cotton purchased directly from the farmers from 01.04.2021 to 31.05.2021 in the GSTR- 3B of June 2021 and I am producing herewith the copy of the said return.

Q. : During the Panchnama dated 21.06.2021, it was observed that apart from carrying out ginning of raw cotton, you are also carrying out milling of cotton seeds to cotton seed oil and cattle feed. Please explain the percentage yield of such Cotton seed, Cattle feed, wastage etc. from the total quantity of raw cotton purchased as above.

A :I hereby state that 32-35% by weight of the raw cotton is recovered as pure cotton during the ginning process and 1-2% goes in sweep and waste, while the remaining percentage in weight is gained as cotton seed. As regarding the milling process on cotton seed, about 10% by weight of cotton seed is recovered as cotton seed oil while the remaining 90% is turned as oil cake to be used as cattle feed.

4. In view of the above, it was observed that the tax payer have purchased the goods from agriculturist but have failed to discharge GST liability under Reverse Charge mechanism basis at the appropriate rate as per Notification No. 4/2017- Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 43/2017- Central Tax (Rate) dated 14.11.2017.

5. Further, in terms of section 9(3) of the CGST Act, 2017 read with Notification No. 4/2017- Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 43/2017- Central Tax (Rate) dated 14.11.2017 at Sr. No. 4A, GST is required to be paid under RCM basis by the person who purchase the goods (Raw Cotton) from agriculturist.

6. However, on verification of GST payment under RCM basis, it was noticed that the said taxpayer had not discharged GST liability on goods purchased from Agriculturist on which GST shall be paid under Reverse Charge Mechanism in view of the above notification. The sr.no. 4A of Notification no. 43/2017-Central Tax (Rate) dated 14.11.2017 with Note is reproduced as under:

Sl. No.	Tariff item, sub heading, heading or Chapter	Description of Goods	Supplier of Goods	Recipient of Supply
1	2	3	4	5
4A	5201	Raw Cotton	Agriculturist	Any Registered Person

Note:- The principal notification No. 4/2017- Central Tax (Rate), dated the 28<sup>th</sup> June , 2017, published in the Gazette of India, Extraordinary, part-II, Section 3, Sub Section (i), vide number G.S.R. 676 (E) , dated the 28<sup>th</sup> June 2017 and last amended by Notification No. 36/2017- Central Tax (Rate), dated 13<sup>th</sup> October,2017 published in the Gazette of India, Extraordinary, part-II, Section 3, Sub Section (i), vide number G.S.R. 1285 (E) , dated the 13<sup>th</sup> October 2017.

7. Further, the taxpayer is required to pay 2.5% CGST + 2.5% SGST on goods purchased from Agriculturist as per Chapter Heading of Chapter-52 (5201) of CGST Tariff of India is reproduced as below:

Chapter section or heading	Description of goods	Rate%	
		CGST	SGST
Heading 5201	Cotton, not carded or Combed	2.5	2.5

It was noticed that the said taxpayer had not paid the tax on purchased goods from agriculturist for the period from 1.7.2017 to 31.05.2021. The detailed calculation of GST liability is tabulated as under:-

(Amount in actual)

S. No	Goods purchased from unregistered suppliers/farmers	Value of purchased goods	Amount of Tax	Amount of Tax paid under RCM	Difference
1	01.07.2017 to 31.03.2018	21,03,05,108.5	1,05,15,255.4	0	1,05,15,255.4
2	2018-19	33,72,64,604.25	1,68,63,230.2	0	1,68,63,230.2
3	2019-20	12,35,53,331.5	61,77,666.55	0	61,77,666.55
4	2020-21	12,58,48,844	62,92,442.2	0	62,92,442.2
5	01.04.2021 to 31.05.2021	2,66,41,235.63	13,32,061.8	0	13,32,061.8
	IGST	CGST	SGST	Total	
Tax	0	2,05,90,328.08	2,05,90,328.08	4,11,80,656.15	

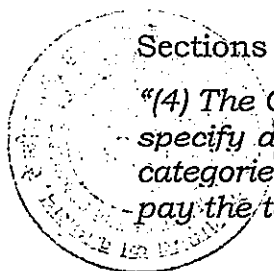
8. It appeared that the said taxpayer had not paid the tax under reverse charge basis for the months from July 2017 to May 2021 within the prescribed due dates.

9.1. The relevant text to Section 9(3) of the Central Goods and Services Act, 2017 ('CGST Act'), is reproduced as under:

*"(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."*

Sections 9(4) of the Act is reproduced as under:

*"(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or*



*services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”*

9.2. In view of the foregoing paras, it appeared that the taxpayer has contravened the provisions of Section 9(3) & (4) of the CGST act, 2017 as they have not paid tax to the Government account as the recipient of such supply of goods.

10. Section 39 of the CGST Act, 2017 lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them including the ITC available with them. Section 39 of the CGST Act, 2017 reads as under:

*“39. (1) Every registered person, other than an Input Service Distributor or a non- resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.*

*(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.*

*(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.*

*(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.*

*(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.*

*(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:*

*Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.*

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.”

#### 10.1. Section 59 of CGST Act 2017: Self Assessment

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

#### 10.2. CGST Rule 85: Electronic Liability Register

(1) The electronic liability register specified under subsection (7) of section 49 shall be maintained in FORM GST PMT 01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.

(2) The electronic liability register of the person shall be debited by-

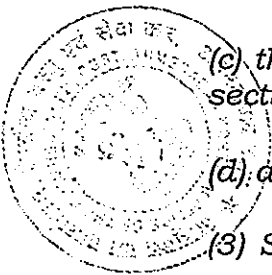
(a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;

(b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;

(c) the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or

(d) any amount of interest that may accrue from time to time.

(3) Subject to the provisions of section 49, section 49A and section 49B, payment of every liability by a registered person as per his return shall be



*made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.*

*(4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.*

*(5) Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.*

*(6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.*

*(7) A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT 04.*

From conjoint reading of Section 39 of CGST Act, 2017 read with the provisions of Rules 85(3) & (4) of the CGST Rules, 2017 as they have failed to pay tax to the Government account within the prescribed due dates, it appeared that M/s Jay Cotex should have filed correct GSTR-3B returns, however they have knowingly failed to file correct GSTR-3B returns. They should have declared the value of purchase of goods (Raw cotton) in the appropriate column of GSTR-3B return viz. Inward supplies (liable to reverse charge).

### 10.3. Section 50 of CGST Act 2017: Interest on Delayed Payment of Tax

*(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.*

*[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]*

*(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*



(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

As M/s. Jay Cotex have failed to discharge their GST liability in due time and thus they have made themselves liable to pay interest on the same under Section 50(1) and Section 50(2) of the CGST Act, 2017 and Section 20 of IGST Act, 2017, as applicable.

#### INVOCATION OF SECTION 74 OF THE CGST ACT, 2017

11. Section 74 of the CGST Act, 2017:

*"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

*(2) to (6).....*

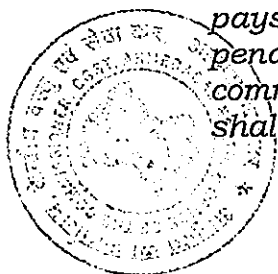
*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

*(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded."*



## CONTRAVENTIONS

12. In light of the facts discussed hereinabove and the material evidences available on record, it appeared that M/s Jay Cotex have contravened the following provisions of the CGST Act, 2017/CGST Rules, 2017:

- (i) Section 9(3) & (4) of the CGST act, 2017 as they have not paid tax to the Government account as the recipient of such supply of goods.
- (ii) Section 39 of the CGST Act, 2017 read with the provisions of Rules 85(3) & (4) of the CGST Rules, 2017 in as much as they failed to file correct GSTR-3 returns, failing which declared the value of purchase of goods (Raw cotton) in the appropriate column of GSTR-3B return viz. Inward supplies (liable to reverse charge) an intend to evade payment of tax;
- (iii) Section 50 of the CGST Act, 2017, in as much as they failed to discharge their GST liability in due time / failed to pay tax on the value of purchase of goods (Raw cotton) viz. Inward supplies (liable to reverse charge);
- (iv) Section 59 of the CGST Act, 2017, in as much as they failed to self-assess their tax liability with an intend to evade payment of tax;

13. The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer.

14. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017. It was noticed that the said taxpayer suppressed the fact i.e. not payment of GST and thereby that knowingly failed to correctly self assess tax payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the department comes to know about failure to pay tax on the value of purchase of goods (Raw cotton) viz. Inward supplies (liable to reverse charge); only during the scrutiny of the statutory returns filed by the taxpayers under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

15. Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

*"Explanation 2.-For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer"*

16. From the Information/data of the taxpayer verified during the course of Inspection, it appeared that the taxpayer have not paid GST on the value of purchase of goods (Raw cotton) viz. Inward supplies (liable to reverse charge) it appeared that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax/ Interest liabilities is utter disregard

to the requirements of law and breach of trust deposited on them is outright act in defiance of law by way suppression, concealment & non-furnishing value of taxable Inward supplies with intent to evade payment of tax. The above said not payment of GST is unearthed after Inspection/Search was conducted by officers of Central GST, Ahmedabad North and therefore had the said not payment of GST had not been detected during Inspection/Search, it would have remained unnoticed. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act,2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017.

17. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

17.1. It was noticed that the taxpayer had not paid the tax within the prescribed due dates on the Inward supplies made by them. These Inward supplies were not shown in their GSTR 3B returns. It, therefore, appeared that there is a case of suppression of facts to evade the payment of tax. Non paid CGST/SGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act' 2017 along with interest under Section 50 of the CGST Act' 2017 read with the provisions of Section 20 of the IGST Act, 2017.

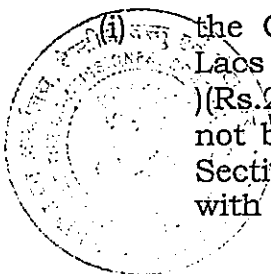
17.2. By their various acts discussed above, the said taxpayer rendered themselves liable for penal action under Section 74 (1) of the CGST Act' 2017 for failure to file proper statutory GST returns duly discharging the proper tax liability, failure to pay tax, failure to self-assess the tax liability and suppression of facts and contravention of various provisions of the CGST Act'2017 and Rules made there under with intent to evade payment of GST; thereby penalty under Section 74(1) of the CGST Act' 2017 is invocable.

18. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01 A was issued to the said taxpayer on 05.01.2023 intimating their liability under Section 74(5) of the CGST Act, 2017 and advising them to pay the tax as ascertained therein or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 09.01.2023.

18.1. The said taxpayer has neither paid tax as ascertained and intimated by this office vide DRC-01 A mentioned in above paragraph nor any written submissions have been received from them till date.

19. Therefore, Show Cause Notice No.AE/ENQ/GST/528/2021 dated 28.02.2023 was issued to M/s.Jay Cotex, called upon to show cause as to why:

the GST total amounting to Rs. 4,11,80,656/- (Four Crore Eleven Lacs Eighty Thousand Six Hundred Fifty Six only) (Rs.2,05,90,328.08/- - CGST + Rs.2,05,90,328.08/- - SGST) should not be demanded and recovered from them, under the provisions of Section 74 (1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 as discussed in para 7 above;



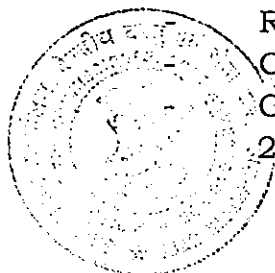
- (ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 19 (i) above, under the provisions of Section 50(1) and Section 50(2) of the CGST Act, 2017 and Section 20 of IGST Act, 2017;
- (iii) Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on tax amount mentioned at 19(i) above.

#### DEFENCE REPLY

20. The assessee vide letters dated 27.03.2023 & 20.07.2023 submitted their reply to SCN wherein they stated that RCM on raw cotton purchased from agriculturist is payable @5% from 14.11.2017 u/s.9(3) which immediately take credit as an ITC against output liabilities but they have not paid purchase tax (ITC) as general practice under Gujarat Value Added Tax Act and same is not taken ITC against their output liabilities. They are cotton merchants and they did not understand why few agricultural products notified under RCM i.e. because their commodity is costly and raw cotton is not directly marketable hence after process of ginning and pressing, separate cotton and cotton seeds are marketable so big capital amount is held in stock and on that amount GST under RCM also more financial burden. They are doing adventurous business against big bank cash credit against hypothecation of stock hence their cotton merchant federation has given representation before state finance minister to withdraw RCM provision on cotton because RCM provision is not applicable on other taxable agriculture commodities hence this RCM provision is no similar to other agriculture products hence provision itself is discriminatory and it is not judicial. Moreover, payment of RCM is claimable as a ITC against output liabilities when they are sold. Thus they have paid fully their output liabilities hence they have not made any tax evasion or revenue loss to government treasury. This is their technical default and in their case there is revenue neutral. Hence their bonafide belief that this case is not evasion of tax or fraud or willfull misstatement or suppression of facts therefore their case is not fall under Section 74 but it is a case under Section 73. Their default period starts from 14.11.2017 to 31.03.2021 and that period RCM is not paid but total output liability paid in which cash payment made Rs.2,96,10,095/- hence they have lessen tax paid maximum on closing stock which lying unsold which will be paid on sale of good hence their case is revenue neutral hence their best belief that there is no need of further payment of tax on RCM basis because said RCM on that goods purchased is already sold and fully paid output liability hence RCM is rolled over and not necessary on which output liabilities are fully paid in cash.

21. They further stated that the following decisions comes in favour of dealers and tax payers:

- Ashirwad Foundaries P.Ltd VsKolkata North Commissionerate (Tax AppeaNo.75639 of 2019
- Reliance Industreis Vs.Mumbai 2016 (44) STR 82 (Tri-Mumbai)
- CCE, Pune VscOCA Cola India P.Ltd
- CCE Vadodara Vs Narmada Chematur Pharma Ltd 2005 (179) ELT 276(SC)



It has been held by the Hon'ble SC in the above cases, that if there is no revenue implication involved, then no tax is required to be paid. It has been further held that if for the same assessee tax paid is modvatable then no tax is required to be paid. Moreover liability shown in SCN under the provisions of RCM under Section 9(3), if right, there is double taxation on goods which purchased and supplied and output liability is already paid hence double taxation. They further stated that RCM provision is not applicable to all taxable agricultural commodity hence provision itself make discrimination and injustice to specific cotton dealers because all agricultural commodity business is seasonal business and hence sometime huge stock lying unsold due price difference and export import policy of govt. hence provisions of RCM become heavy burden in locking capital which ultimate convert into unnecessary interest payment burden. They stated that their intention is never to evade GST, due to non payment of RCM and non claim of ITC in their GSTR 3 B and GSTR 9 there was no loss of revenue to Govt. and requested to drop the proceedings.

#### PERSONAL HEARING

22. In the instant case, Personal Hearing was granted to the tax payer on 13.07.2023. Shri M.M.Gandhi, Partner and Shri Dipak V Shah, authorised representative attended the P.H. and re-iterated their written submission dated 27.03.2023. He further requested 10 days time to submit detailed reply and accordingly they submitted their detailed reply dated 20.07.2023 on 07.08.2023.

#### DISCUSSION AND FINDINGS

23. In this case, I have carefully gone through the Show Cause Notice, reply to SCN and other submissions made by the assessee during the course of P.H. On perusal of the above submissions, I find that the issue to be decided is as to whether the said tax payer is liable to pay GST of Rs.4,11,80,656/- under Reverse Charge Mechanism on the purchase value of raw cotton in terms of Section 9(3) of CGST Act, 2017 read with Noti.No.4/2017 dated 28.06.2017 as amended vide Noti.No.43/2017 dated 14.11.2017 during the period from July 2017 to May 2021 or not.

24. On perusal of the records of the instant case, I find that the tax payer is a partnership firm and are engaged in ginning activity of raw cotton for which they have registered with GST under Registration No. 24AAIFJ5362N1ZZ. On receipt of information that they are not paying any GST under Reverse Charge Mechanism in terms of Section 9(3) of CGST Act, 2017 read with Noti.No.4/2017 dated 28.06.2017 as amended vide Noti.No.43/2017 dated 14.11.2017 during the period from July 2017 to May 2021, an inspection was under taken at the premises of the tax payer. On verification of details, it was noticed that they have purchased the raw cotton from agriculturist but have not paid any GST under RCM as required under above referred Act and Notifications.

25. In this connection, I have gone through the Section 9(3) of CGST Act, 2017 which authroises the Govt to issue Notifications to specify the categories of supply of goods or services or both, the tax on which shall be paid

on RCM by the recipient of such goods or services or both and also all the provisions of the Act made applicable to recipients as if the person liable for paying the tax in relation to the supply of such goods or services or both. Further Section 9(4) of the CGST Act, 2017 authorises the Govt. to issue Notification to specify the class of registered persons who shall in respect of supply of specified categories of supply of goods or services or both, the tax on which shall be paid on RCM by the recipients of such goods or services or both and also all the provisions of the Act made applicable to recipients as if the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly Notification No.04/2017 dated 28.06.2017 as amended vide Noti.No.43/2017 was issued and according to which any registered person who purchased raw cotton from agriculturist is required to pay 2.5% CGST and 2.5% SGST (total 5% of value) as per CH.5201 under Reverse Charge Mechanism.

26. Accordingly, in the instant case, the tax payer, being a registered person, is required to pay CGST @2.5% and SGST @2.5% (total 5%) on the purchase value of raw cotton purchased from various agriculturists. In this connection, statement of Shri Hasmukhbhai Patel, partner of the taxpayer firm recorded wherein he agreed that they have purchased raw cotton from agriculturist as detailed below from 01.07.2017 to 31.05.2021. The CGST and SGST liabilities have also been ascertained accordingly as under:

S. No	Goods purchased from unregistered suppliers/farmers	Value of purchased goods	Amount of Tax	Amount of Tax paid under RCM	Difference
1	01.07.2017 to 31.03.2018	21,03,05,108.5	1,05,15,255.4	0	1,05,15,255.4
2	2018-19	33,72,64,604.25	1,68,63,230.2	0	1,68,63,230.2
3	2019-20	12,35,53,331.5	61,77,666.55	0	61,77,666.55
4	2020-21	12,58,48,844	62,92,442.2	0	62,92,442.2
5	01.04.2021 to 31.05.2021	2,66,41,235.63	13,32,061.8	0	13,32,061.8
	IGST	CGST	SGST	Total	
Tax	0	2,05,90,328.08	2,05,90,328.08	4,11,80,656.15	

27. On perusal of the above details, I find that the assessee has purchased raw cotton for the period from 01.07.2017 to 31.05.2021 from unregistered supplier, i.e. agriculturists and accordingly they are liable to pay GST of Rs.4,11,82,656/- (Rs.2,05,90,328/- CGST + Rs.2,05,90,328/- SGST) in terms of Section 9(3) and 9 (4) of GST Act, 2017 and Notifications issued thereunder. As the tax payer is failed to pay the required GST, the same is to be recovered from them under the provisions of Section 74(1) of the CGST Act,

2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 alongwith interest and penalty.

28. In this connection, the assessee in their reply to SCN, contended that RCM provision is not applicable in other agricultural products, hence the provision is discriminatory and therefore not judicial is not acceptable. They have not provided any supporting document to prove that there is any discrimination for demanding any GST. Further the assessee claimed that their case is revenue neutral as they can take credit on payment of tax under RCM. The said point of the assessee is also not meritorious as the availability of Input Tax Credit (ITC) is not related to payment of GST under RCM. The provisions of payment of GST under RCM are different from the provisions of Input Tax Credit as both are different and are governed by different Sections of the GST Act, 2017. The eligibility of the tax payer to avail the ITC and utilization thereof is governed by the provisions of Act, related to ITC. Hence it cannot be construed that the payment of GST under RCM is not required if they are eligible for ITC. In view of the above facts, their plea of revenue neutrality cannot be accepted as it was not supported by any provisions of the GST Act, 2017.

29. Moreover, the tax payer further claimed that they have paid GST of Rs.2,96,10,095/- on their out word supply of goods and hence they are not liable to pay any GST under RCM has also not supported by any legal backing. It is liability of the out word supplier to pay GST on the out ward supply either by utilizing ITC, if available, or by cash. In the instant case, they should have first pay the GST under RCM as required by Law and thereafter they should have availed the ITC, if eligible, then they have to utilizes the same against the said out word supply by following proper procedure. In this connection, the said tax payer relied upon a number of case laws in support of their reply. However none of the case law is relevant in the instant issue.

30. Further, I find that Section 39 of the CGST Act, 2017 read with Gujarat GST Act, 2017 along with Rule 59 of the CGST Rules, 2017 stipulates the taxpayers to furnish returns in such form and manner as may be prescribed. I find that the said tax payer was under obligation to furnish returns in the prescribed form and manner..

31. It is also a fact that, the said tax payer in order to suppress their taxable income from the department, had not filed correct GSTR-3B Returns timely as stipulated under Section 39 of CGST Act 2017 for the period from 01.07.2017 to 31.05.2021. They should have declared the value of purchase of goods (raw cotton) in the appropriate column of GSTR 3 B return viz. inward supplies (liable to reverse charge). But they did not file the said return correctly thereby violated the provisions of section 39 of CGST Act, 2017. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of the said tax payer, it shows their intent to evade payment of GST by an act of omission in as much as they though being well aware of the unambiguous provisions of

the CGST Act, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was payable but not paid by them, by way of not filing their correct GSTR-3B for the period 01.07.2017 to 31.05.2017 before initiation of the present investigation.

32. In view of the above, it appeared that the said tax payer had contravened the following provisions of the CGST Act, 2017:

- a. Section 9(3) & 9(4) of the CGST Act 2017 read with Section 9(30 & 9(4) of GGST Act, 2017 in as much as they failed to pay the appropriate GST on receipt of supply of goods with intent to evade payment of Tax;
- b. Section 39 of the CGST Act 2017 read with provisions of Rule 85(3) & (4) of the CGST Act 2017 and similar provisions of GGST Act 2017 in as much as they failed to file correct GSTR-3 returns by not showing to declare the value of purchase of goods (raw cotton) in the appropriate column of GSTR 3 B return viz inward supplies (liable to reverse charge) for the period from 01.07.2017 to 31.05.2021 with an intent to evade payment of tax.
- c. Section 50 of the CGST Act, 2017, in as much as they failed to discharge their GST liability in due time / failed to pay tax on the value of purchase of goods (Raw cotton) viz. Inward supplies (liable to reverse charge);
- d. Section 59 of the CGST Act, 2017 read with Section 59 of the GGST Act, 2017 in as much as they failed to self-assess their tax liability with an intent to evade payment of tax.

33. The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer.

34. Every registered taxable person shall himself assess the taxes payable and furnish a return for each tax period. This means GST continues to promote self-assessment just like the Excise, VAT and Service Tax under current tax regime. Accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the tax payer; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. Had the investigation not been initiated by the Preventive Wing of the Department and inspection of their premises not conducted, the matter would have not come to the notice of the Department. Non payment of tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of tax. All the above facts of contravention on the part of the said assessee have been committed



with an intention to evade the payment of tax by suppressing the facts. Therefore, GST amounting to Rs. 4,11,80,656/- (CGST Rs.2,05,90,328/- + SGST Rs. 2,05,90,328/-) for the period from 01.07.2017 to 31.05.2021 is required to be recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.

35. Further, as per Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017, every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed is liable to pay the interest at the applicable rate of interest. Since the said tax payer had failed to pay their Tax liabilities in the prescribed time limit, I find that the said tax payer is liable to pay the said amount along with interest. Thus, the said Tax is required to be recovered from the said tax payer along with interest under Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

36. As far as imposition of penalty under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 as they failed to pay the tax with the intend to evade the same. It is seen from the facts that have emerged during the investigation of the instant case that M/s Jay Cottex have knowingly failed to file the stipulated returns and knowingly suppressed the actual value of the services supplied by them and thereby have knowingly failed to correctly self-assess the tax payable with an intent to evade payment of proper tax. In order to suppress their taxable income from the department, they had not filed the correct GST Returns for the period from 01.07.2017 to 31.05.2021. The non depositing of GST under RCM were detected only when the department initiated the present investigation. This clearly appears to be done intentionally in order to suppress their actual tax liability for evading GST.

37. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s. Jay Cottex, it shows their intent to evade payment of GST by an act of omission in as much as M/s. Jay Cottex though being well aware of the unambiguous provisions of the CGST, 2017 read with GGST Act, 2017 and Rules made thereunder, failed to disclose to the department at any point of time by way of not filing their correct GST Returns GSTR-3B for the period from 01.07.2017 to 31.05.2021 before initiation of the present investigation. This amounts to wilful suppression of facts with the deliberate intent to evade payment of GST. Therefore, the demand of tax not paid / short paid as envisaged under proviso to Section 74 of the CGST Act, 2017 read with Section 74. of the GGST Act, 2017 appears to be invocable to demand GST for the period from 01.07.2017 to 31.05.2021. It is also a fact that they had deliberately suppressed the value of goods supplied by them, with an intent to evade the proper payment of tax on its due date. These facts would not have

come to light had the department not initiated inquiry against the said tax payer. The assessee had thus, willfully suppressed the actual provision of taxable value of goods supplied by them with an intent to evade the Tax. Hence, I find that this is a fit case to impose penalty equivalent to the tax under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

38. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of UIO Vs Dharmendra Textile Processors -2008 (231)ELT 3(SC) and further clarification in the case of M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C) wherein, it was, inter alia held that:

*"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides".* With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty and there is no discretion available on quantum of penalty imposable under that section

39. From the above facts, I hold that the said tax payer is liable to pay GST amounting to Rs. 4,11,80,656/- ( CGST Rs.2,05,90,328/- + SGST Rs. 2,05,90,328/-) for the period from 01.07.2017 to 31.05.2021. Therefore, GST amounting to Rs. 4,11,80,656/- ( CGST Rs.2,05,90,328/- + SGST Rs. 2,05,90,328/-) is liable to be recovered from the said tax payer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 and penalty under Section 74(1) of the Act, ibid.

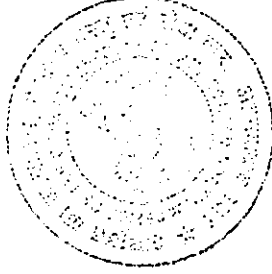
40. In view of the above discussion and findings, I pass the following order :-

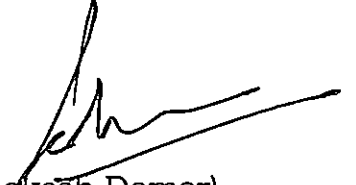
#### O R D E R

- (i) I confirm the demand of GST amount of Rs. 4,11,80,656/- ( CGST Rs.2,05,90,328/- + SGST Rs. 2,05,90,328/-) (Rupees Four Crore Eleven Lakh Eighty Thousand Six Hundred Fifty Six only) and order to recover the same from them under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) I order to demand Interest at the appropriate rate and order to recover the same from them under Section 50 (1) & 50(2) of the CGST Act, 2017 read with corresponding entry of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iii) I impose a penalty of Rs. 4,11,80,656/- ( CGST Rs.2,05,90,328/- + SGST Rs. 2,05,90,328/-) (Rupees Four Crore Eleven Lakh Eighty Thousand Six Hundred Fifty Six only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20

of IGST Act, 2017. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

49. Accordingly the SCN No.AE/ENQ/GST/528/2021 dated 28.02.2023 is disposed off.



  
(Lokesb Damor)  
Joint Commissioner,  
Central GST & CE.,  
Ahmedabad North.

BY SPEED POST/HAND DELIVERY

F. No.GST/15-62/OA/2022

Date: 23.08.2023.

To,  
M/s. Jay Cottex,  
103A, AT-Transad,  
Tal.Dholka, Ahmedabad,  
Gujarat - 382225.

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division- V Ahmedabad North.
3. The Superintendent, Range-I, Division-V, Central GST & Central Excise, Ahmedabad North with a request to create GST DRC 7 and upload the same alongwith OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
- ✓ 4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.

