



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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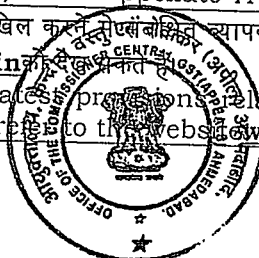


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DIN NO.: 20231164SW000000E9F8

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2214/2023 / 377US-50
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-77/2023-24 and 27.10.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.11.2023
(ङ)	Arising out of Order-In-Original No. 133/DC/D/VM/22-23 dated 21.03.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shree Ram Cotton (GSTIN: 24ACBFS4547H1Z5), 262/263, GIDC, Hansalpur, Taluka: Viramgam, Ahmedabad-382150

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in पर प्रवेश कर सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE :**

M/s Shree Ram Cotton, 262/263, GIDC, Hansalpur, Taluka: Viramgam, District: Ahmedabad 382150 (hereinafter referred to as *the 'Appellant'*) has filed the present appeal against the Order in Original No. 133/DC/D/VM/22-23 dated 21.03.2023 (hereinafter referred to as the *'impugned order'*) passed by the Deputy Commissioner, CGST & C. Ex., Division-III, Ahmedabad North Commissionerate (hereinafter referred to as *the 'adjudicating authority'*).

2(i). Briefly stated the facts of the case are that the *'Appellant'* is holding GST Registration No. 24ACBFS4547HIZ5 and has filed the present appeal on 21.06.2023. During the course of audit for the period July 2017 to March 2020 and on verification of the purchase records and GSTR-3B returns of the appellant, it was observed that they had purchased raw cotton (kala in local parlance) from agriculturists. It appeared that they had not paid the CGST and SGST (collectively 'tax') on these purchases on reverse charge basis, in terms of the provisions of Section 9(3) of the CGST Act, 2017 and Section 9(3) of the Gujarat SGST Act, 2017 (collectively 'Act read with Notfn No 43/2017-Central Tax (Rate) dated 14.11.2017 (effective from 15.11.2017). Further, consequent receipt of GST DRC-01A dated 13.01.2022, the appellant had paid the tax amounting to Rs. 1,31,24,248/- under the provision of Section 73(5) of the Act alongwith interest of Rs. 10,00,000/- vide GST DRC-03 dated 05.03.2022 under the provision of section 73(5) of the CGST Act, 2017 read with section 50(1) of the CGST Act, 2017. However, the appellant has not paid penalty under Section 73(1) of the CGST Act, 2017 read with provisions of Section 122(2)(a) of the Act.

3. The *'Appellant'* had been issued a Show Cause Notice No. 165/2021-22 dated 29.03.2022. Further, the adjudicating authority has adjudicated the impugned order by confirming the demand, interest and penalty amounting to Rs. 1,31,24,248/- , Rs. 10,00,000/- and penalty respectively on the following grounds:

- that they had purchased raw cotton (kala in local parlance) from agriculturists. It appeared that they had not paid the CGS'T and SGS'T (collectively 'tax') on these purchases on reverse charge basis, in terms of the provisions of Section 9(3) of the CGS'T Act, 2017 and Section 9(3) of the Gujarat SGST Act, 2017 (collectively 'Act')read with Notification No. 3/2017-CE(Rate) (S. No 4A).



4. Being aggrieved with the impugned order, the appellant has filed the present appeal on 21.06.2023. The appellant contending on the grounds that:

- The appellant has purchased Kala from various unregistered suppliers during the subject period and GST under reverse charge is payable on purchase of "Raw cotton". There is a significant difference between Kala and Raw cotton.
 - Kala is indigenous strain of rain-fed old-world cotton. It is harvested with shale (Kala). Further, it is purely rain fed crop that has a high tolerance for both disease and pests, and requires minimal Investment. It is resilient as well as resurgent in the face of stressful land conditions. Kala is an energy-efficient and carbon neutral crop. It grows naturally.
 - While raw cotton after ginning is known as lint or cotton fiber after being separated from the seed is called lint. Lint refers to suitable long fiber for producing yam, separated from cotton seed. So, cotton without shell (or mature shell) and other impurities is known as Raw Cotton.
 - The said fact is also evident from the certificate of Associate Research Scientist, Regional cotton research station Anand agricultural university;
 - the appellant submits that as per commercial parlance/common parlance test kala is distinct from raw cotton, which can also be seen from the letter of the MLA who for the benefit of the trader and agriculturists at large has demanded for MSP on kala.
- Hence, Since the taxable person has purchased Kala, RCM @ 5% as notified is not leviable on the taxable person;
- The given case is revenue neutral as the amount paid under RCM would have been claimed as input tax credit;
 - Assuming (without admitting) that the transaction entered into by the taxable person is liable to GST under RCM (which taxable person strongly denies) even then the same would result in revenue neutrality. The taxable person submits that if GST is held to be payable then the same would have been claimed as ITC Credit by him. In the case under consideration, the taxable person has neither paid GST (as they were not liable to pay the same) nor they have claimed any ITC Credit of the same and hence the case is revenue neutral.
 - In other words, if the GST would have been paid by the taxable person under RCM, the same would have been available to them as ITC Credit as the taxable person has been paying GST on voluntary basis. Hence



the payment of GST would have been revenue neutral. In the under-mentioned cases it has been held that if situation is revenue neutral it cannot be even alleged or held that taxable person has intention to evade the payment of Tax. In such a case extended period is not invocable as there would be no intention to evade tax.

- *The Hon'ble Gujarat High Court in case of M/s. Indeos ABS Limited 2010 (254) ELT 628 (Guj.) has approved the Tribunal decision in case of Indeos ABS Limited setting aside the demand of duty on the point of revenue neutrality, as appeal filed by the Commissioner as against the said order of the Tribunal was rejected by the Hon'ble High Court.*
- *The Hon'ble Ahmedabad Tribunal in case of M/s. Mafatlal Industries Limited 2009 (241) ELT 153(Tri. Ahmd) has held that if duty paid is available as CENVAT Credit, entire exercise is revenue neutral, the demand shall not be confirmed on the said ground as it is basically taking out money from one pocket and putting the same in the other pocket of same trouser. Further Department appeal against the said order was dismissed by the Hon'ble Supreme Court as reported at 2010 (255) ELT A77 (SC).*

This makes the entire exercise revenue neutral. When the entire exercise is revenue neutral there is no ground to demand interest and penalty from the Appellant. Thus, the Show Cause Notice must be set aside.

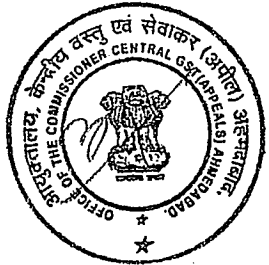
- *That there can be no demand of interest when there is no delayed payment;*
- *That penalty is not imposable when amount of tax is paid voluntarily prior to issue of notice as per section 73(8).*
- *Without prejudice to other contentions, it is to submit that no mens rea can be attributed to the Appellant merely failure to pay GST in cases where the transaction is revenue neutral.*

In view of forgoing submissions, the appellant prayed to Set aside the penalty imposed under section 73 of the CGST Act, 2017 along with section 122 of the CGST Act, 2017 vide the impugned OIO dated 23" March 2023 and to Set aside the interest levied under section 50 of the CGST Act, 2017 vide the impugned OIO dated 23" March 2023.

2(iii). *The appellant further submitted additional written submission contending on the grounds that:*

- *that they purchased Kala Cotton which is different from raw cotton, and the tax was available as input tax credit.*

- In the light of the Circular No. 200/12/2023-GST issued by Ministry of Finance dated 1st August, 2023 the clarification regarding the taxation on purchase of "Kala Cotton" is given based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023.
- The circular from the Ministry of Finance has provided clarity on the taxable nature of "Kala Cotton" supply, effectively resolving the prior ambiguity surrounding its taxability. It's worth noting that, before the issuance of this circular, there existed no explicit provision for taxing "kala cotton" as a raw material. demand for interest Consequently, the and penalty on this raw material appears unjustified, as there were no established tax regulations in place for it at the time. In light of this, it
- becomes evident that the interest and penalty imposed on the appellant lack a valid basis.
- To address genuine doubts that existed in the past, the issues for periods before this clarification is regularized without changes on an as is basis":
- The circular unambiguously stipulates that the concerns, ambiguities, and uncertainties linked to relevant provisions preceding its issuance will maintain their status quo. In essence, this circular does not exert retroactive influence on matters from the date it was published, thus substantiating the authentic and genuine uncertainties that existed regarding the taxability of "kala cotton" during prior periods.



PERSONAL HEARING :

Personal Hearing in the matter was held on 28.08.2023, wherein Mr. Bishan Shah, C.A. appeared in person on behalf of the 'Appellant' as Authorized Representative. During the personal hearing he has submitted that the issue is clarified in 50th GST Counsel meeting and it was decided that all past assessment/proceedings shall be kept on as is basis. He further stated that he will submit further reply/submission and request for 01 month time. Accordingly, they have submitted the additional documents on 03.10.2023.

DISCUSSION AND FINDINGS :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal. The main issue in the instant case is to decide whether kala cotton, purchased from an agriculturist, by the appellant, who is a registered person, is required to pay tax under RCM. It appears that though the appellant had purchased raw

cotton from agriculturist, they have not discharged the tax under RCM, in terms of the provisions of Section 9(3) of the Act read with Notification No. 43/2017-CE (Rate) Sr. No. 4A.

The relevant text to the provisions of Section 9(3), of the Act is reproduced below:

"(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"

4(ii). Notification No 4/2017-Central Tax (Rate) dated 28.06.2017 prescribed the tax rates to be paid on supplies on reverse charge basis, in terms of the provisions of Sections 9(3) of the Act. This Notification was amended by Notification No. 43/2017-Central Tax (Rate) dated 14.11.2017 (effective from 15.11.2017). S. No. 4A was inserted to say that in case of raw cotton purchased from an agriculturist, the recipient of the supply who is a registered person is required to tax under RCM. The relevant text of the amended notification is reproduced below: In the said notification, in the

TABLE,
after SI. No. 4 and the entries relating thereto, the following serial number and the entries shall be inserted namely:

Sr. No.	Tariff item, Sub-heading, heading or chapter	Description of supply of goods	Supplier of goods	Recipient of supply
4A	5201	Raw Cotton	Agriculturist	Any registered person.

This notification shall come into force with effect from the 15th day of November, 2017"

5(i). In view of the above, it is observed that the appellant had purchased raw cotton (Kala in local parlance) from an agriculturist and in terms of the provisions of Section 9(3) of the CGST Act 2017 read with Notification No. 43/2017-CE(Rate) (Sr. No. 4) are liable to pay tax under RCM. Appellant in this regard has argued that there is vast difference between kala cotton and raw cotton and both can't be treated same. They further submitted that the same has been certified by the Associate Research Scientist, Regional Cotton

Research Station- Anand Agricultural University. Further, their case is revenue neutral. However department view in this regard is that raw cotton includes kala cotton. Kala word is a local parlance of raw and both are same and attract tax under RCM.

5(ii). In this regard and in the light of the Circular No. 200/12/2023-GST issued by Ministry of Finance dated 1st August, 2023 the clarification regarding the taxation on purchase of "Kala Cotton" is given based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023.

6. Supply of raw cotton by agriculturist to cooperatives:

6.1 As per recommendation of the GST Council, it is hereby clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST on reverse charge basis under notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017.

6.2 In view of prevailing genuine doubts, the issue for the past periods prior to issue of this clarification is hereby regularized on "as is basis".

5(iii). In the light of the above circular it is clear that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST on reverse charge basis under notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017. In this regard it is observed that Kala word is a local parlance of raw and both are same and attract tax under RCM. Accordingly, the appellant is liable to 5% GST on reversed charge basis.

6(i). Further the appellant argued that penalty is not imposable when amount of tax is paid voluntarily prior to issue of notice as per section 73(8). In this regard I refer Section 73(8) of the CGST Act, 2017 which is reproduced below:

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section



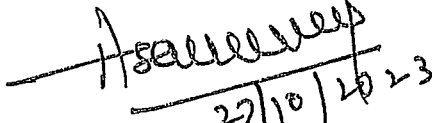
50" > section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

6(ii). In view of the above it is observed that in the instant case the appellant had paid the tax and interest before the issue of Show Cause Notice. Accordingly, as per Section 73(8) of the CGST Act, 2017 the appellant is not liable to pay penalty.


7. In view of the above, I uphold the impugned Order in Original passed by the Adjudicating Authority to the confirmation of demand and interest; however I reject the imposition of penalty under Section 73(8) of the CGST Act, 2017.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the *appellant* stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 27.10.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
M/s Shree Ram Cotton, 262/263,
GIDC, Hansalpur, Taluka: Viramgam,
District: Ahmedabad 382150.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-III, Ahmedabad North.
5. The Superintendent (System), CGST Appeals, Ahmedabad. Commissionerate.
6. Guard File.
7. P.A. File

