2025:PHHC:135774-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP Nos.12, 21, 22, 23 24, 112 and 122 of 2014 (O&M)
Date of decision: 17.09.2025

THE SHAHABAD CO-OPERATIVE MILLS LTD.

..... Appellant(s)

Versus

STATE OF HARYANA AND ANOTHER

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Sunil K. Mukhi, Advocate
for appellant(s).

Ms. Mamta Singla Talwar, DAG, Haryana.

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1. VATAP Nos. 12, 21, 22, 23, 24, 112 and 122 all of the year 2014, are taken up together for hearing and adjudication at request and with consent of learned counsel for parties, as all these appeals arise from common order dated 14.09.2009, passed by learned Haryana Tax Tribunal, whereby seven appeals filed by present appellant/s challenging order dated 14.08.2008, passed by Joint Excise and Taxation Commissioner (Appeals), had been dismissed. Learned counsel for parties are *ad idem* that an identical issue is involved for consideration in all seven appeals which pertain to different assessment years i.e. 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005. VATAP No.12 of 2014 pertains to assessment year 1999-2000, VATAP No.21 of 2014 to assessment year 2000-2001, VATAP No.22 of 2014 to assessment year 2001-2002, VATAP No.23 of

2014 to assessment year 2002-2003, VATAP No.24 of 2014 to assessment year 2004-2005, VATAP No.112 of 2014 to assessment year 1998-1999 and VATAP No.122 of 2014 to assessment year 2003-2004.

2. Brief facts (as extracted from VATAP-12-2014) for the sake of convenience and as necessary for adjudication of these appeals are that appellant claimed that it was entitled to exemption from payment of tax on sale of press-mud, which was sold only for the purpose of being used as manure. Appellant filed its returns with assessing authority *inter-alia* claiming deductions from its gross turn-over on account of disposal of press-mud obtained in the manufacturing process and supplied exclusively to farmers for manurial purposes. It was claimed that this could not fall within the ambit and scope of entry "fertilizer" as appearing at entry 27 of Schedule 'B' to the Haryana General Sales Tax Act, 1973 (hereinafter referred to as Act, 1973), attracting any liability to tax. Assessing authority vide order dated 28.02.2005 rejected the claim while holding that press-mud was a taxable item thereby additional tax liability of Rs.1,70,201/- (Rs.98,460/- in VATAP No.21 of 2014, Rs.1,11,256/- in VATAP No.22 of 2014, Rs.3,36,049/- in VATAP No.23 of 2014, Rs.3,36,049/- in VATAP No.24 of 2014, Rs.2,44,551.45/- in VATAP No.112 of 2014 and Rs.3,36,049/- in VATAP No.122 of 2014) was determined. Aggrieved of order of assessing authority, appellant filed appeal before Joint Excise and Taxation Officer-cum-Assessing Authority (Appellate Authority). Appellate Authority vide order dated 27.10.2005 remanded the matter to assessing authority observing that assessment order dated 28.02.2005 is silent on the issue as to whether press-mud has actually been consumed for the purpose of manure. Relevant portion of order dated 27.10.2005 reads as under:-

> "The brief facts of the case are that the mill has deposited tax on the sale of pesticides under protest as the sales of pesticides made to the farmers to promote the growth of good quality of sugar cane crops. The second issue pertains to the levy of tax on press-mud (malhi) which comes out on the surface due to heating of sugar cane juice is fertilizer claimed by the mill and sale thereof is tax free.
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> I have duly considered the Issue regarding tax on pesticides distributed by the appellant to the sugar cane grower upheld the levy of tax on pesticides. Hence, appeal on this score is rejected.
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> The second issue pertains to levy of tax on press-mud used as fertilizer and as tax-free. I have gone through the order passed by the Assessing Authority and find that assessment order is silent on this issue whether the product press-mud have actually been consumed for the purpose. So, the matter are remanded back to the Assessing Authority on this limited issue and pass a speaking order before determining the true nature of the transaction i.e. the levy of tax on press mud in the hand of sugar mill."

3. Assessing authority vide order dated 30.04.2007 reiterated the tax as assessed with original assessment order, while observing that appellant mill authorities have not sold press-mud to farmers but to a middle man named Afsar Ali, who had merely filed an affidavit to the effect that he would sell press-mud for manurial purposes only, therefore, sale cannot be said to have been made to farmers for manurial purposes only. Appellants filed appeals challenging order dated 30.04.2007. Joint Excise and Taxation Commissioner, Appeals vide order dated 14.08.2008 dismissed the same while upholding that press-mud related to taxable goods and cannot be termed tax free. Appellants challenged said order dated 14.08.2008 while filing seven appeals before learned Haryana Tax Tribunal. Learned Tribunal

vide order dated 14.09.2009 dismissed appeals on the ground that appellant failed to prove that goods in question were sold only to farmers for use as manure only. Reference application filed by appellant was also dismissed by learned Tribunal on 06.04.2011. Present appeals were thereafter filed in view of amendment in the Act.

4. It is to be noted at this stage that in VATAP No.23 of 2014, pertaining to assessment year 2002-2003, VATAP No.24 of 2014, pertaining to assessment year 2004-2005 and VATAP No.122 of 2014, pertaining to assessment year 2003-2004, Assessing Authority passed assessment orders dated 06.01.2006, 20.03.2007 and 20.03.2007, respectively. Appeals filed by appellant challenging said assessment orders were dismissed by the Joint Excise and Taxation Officer-cum-Assessing Authority (Appellate Authority), on 14.08.2008, 14.08.2008 and 27.10.2005, respectively and the matters were not remanded. Learned Tribunal, further dismissed the appeals filed in all the three matters vide orders dated 14.09.2009, respectively and reference petitions preferred by appellant were also dismissed on 06.04.2011, respectively. Learned counsel for parties submit that present appeals were admitted for consideration of following questions of law:-

> “A) "Whether the Haryana Value Added Tax Tribunal is justified in concurring with the authorities below and thereby holding that the Press Mud is taxable commodity under the Haryana Value Added Tax Act, 2003 irrespective of the fact that the same is used as Manure as it is, and the appellant assessee having fulfilled all the requisite conditions as provided under various provisions of law as provided under section 3 of Sugarcane Press Mud (Control) Order, 1959?"

B) "Whether the Haryana Tax Tribunal Chandigarh is justified in holding that there does not appear to them that on facts any question of law had arisen in the Reference Application and thereby declining reference application by the appellant/assessee without appreciating the fact that for the year 2005-06 the Tribunal itself had allowed the impugned issue in favour of the appellant/assessee vide order dated 24.05.2010 ANNEXURE A-8 so that so the order of the Tribunal is against the Principle of Consistency?"

C) "Whether the Haryana Tax Tribunal Chandigarh is justified in holding that there does not appear to them that on facts and question of law had arisen in the Reference Application and thereby declining reference application by the appellant/assessee which findings of the Tribunal are perverse and against the trite law as so held by Hon'ble Supreme Court of India and other Courts of the Country mentioned herein above?"

5. Learned counsel for appellants vehemently argues that learned Tribunal has grossly erred in dismissing the appeals filed and references preferred by present appellant. Reference is made to Sugarcane Press-mud (Control) Order, 1959 (for short Order, 1959), wherein it is specified that press-mud can not be sold except to a purchaser who furnishes a certificate in writing that he will sell or use press-mud purchased by him only for the purpose of manure and that in case producer of sugar is unable to sell his press-mud during sugarcane crushing season, he may sell the same after crushing season for non-manurial purposes after obtaining a permit under Clause 4 of Order, 1959.

6. Learned counsel for appellant further referred to order dated 24.05.2010, passed by learned Tribunal in the case of State of Haryana Vs. M/s. Shahabad Coop. Mills, Ltd., Shahabad Markanda, Kurukshetra, in Sales Tax Appeal No.779/2009-10, filed by present appellant itself, whereby in similar circumstances, it has been held that press-mud when sold in accordance with provisions of Sub-Clause 1 of Clause 3 of Order, 1959, shall be tax-free as organic manure. Matter was remanded to assessing authority for examining it on factual basis. Learned counsel for appellant referred to paras 9 to 12 of order dated 24.05.2010 which read as under:-

> "9. The relevant entries in Schedule B to the Act, as stated at para 1 above, read "organic manure". Plain meaning of this is that if an item is used as manure and it has organic origin then that item should fall within the entry. It cannot be disputed that press-mud is the refuse or remains of the process of extracting sugar from sugarcane. Sugarcane is a plant and after the process of extracting sugar what remains is the parts of the plant containing little or non-extractable sugar. Hence, press mud decidedly has organic origin. It cannot also be disputed that if It has been sold in terms of regulation of sub-clause (1) of clause 3 of the Control Order, then it is manure and therefore by virtue of its origin an organic manure.
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> 10. It has been brought to our notice that several cases of the appellant Sugar Mill have been decided against the Mill on this issue. We have seen those cases. They are based on the failure of the Sugar Mill to adduce evidence in terms of compliance of sub clause (1) of clause 3 of the Control Order. We have already stated above that if press mud has not been disposed of in terms of the said sub clause, then it is taxable.
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> 11. We may state that in our opinion, if the Legislature has, in order to five relief to the farmers, kept organic manure tax free, then the Legislative Intent cannot be frustrated by rejecting

> claim of sale of press mud, answering to the description of organic manure, lightly on suppositions and possibilities. Burden of indirect taxes is passed on to the purchasers, in the present case to the farmers. Taxing manure at the high rate of 12.5% at which motor cars and other luxuries of life are taxed, simply because press mud can be put to other uses without proving the same amounts to defeating the Legislative intent.
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> 12. On the basis of the above discussion, we hold that press mud when sold in accordance with the provisions of sub clause (1) of clause 3 of the Sugarcane Press Mud (Control) Order will be tax free as organic manure. On the facts and in the circumstances of the case, we remand this matter. to the Assessing Authority for examining it on factual basis."

7. Reference was thereafter made to entry 38 in Schedule 'B' to Haryana Value Added Tax Act, 2003 on 01.07.2005, according to which press-mud (organic manure) would be taxable @ 4% from 01.07.2005. It is submitted that prior to 01.07.2005, sale of press-mud for manurial purposes, was exempted from tax but exigible to tax @ 12.5% when sold for any other purpose. Subsequent to 01.07.2005 press-mud would attract tax @ 4% irrespective of its use.

8. Learned counsel for appellant states that review application in STA no.779 of 2009-2010 also decided on 24.05.2010, was filed and order dated 24.05.2010 was modified only to the extent that sale of press-mud would attract tax @ 4% w.e.f. 01.07.2005 during the year 2005-2006 and in respect to sale of press-mud prior to 01.07.2005, order dated 24.05.2010 would apply. Present appeals are in relation to period(s) prior to 01.07.2005. Learned counsel further submits that apart from affidavit of contractor namely Afsar Ali, to whom press-mud was sold, affidavits of some of farmers to whom press-mud was further sold by Afsar Ali, were also placed on record but learned authorities as well as learned Tax Tribunal did

not pay any heed thereto. It is thus, prayed that present appeals be allowed, order dated 14.08.2008, passed by Joint Excise and Taxation Commissioner (Appeals) and order dated 14.09.2009, passed by learned Haryana Tax Tribunal, whereby seven appeals filed by present appellant had been dismissed as well as orders dismissing reference petitions filed by appellant, be set aside.

9. Learned counsel for respondent has opposed these appeals while submitting that impugned orders have been correctly passed. It is submitted that appellant has in fact failed to prove that press-mud sold by it to Afsar Ali was for manurial purposes only. Dismissal of all the appeals was sought.

10. We heard learned counsel for parties at length and have perused all the files carefully with their able assistance.

11. VATAP No.12 of 2014 was admitted on 05.10.2015 with other appeals being admitted on different dates and directed to be listed alongwith VATAP No.12 of 2014.

12. At the outset, it is to be noted that press-mud is the solid fibrous residue left behind after sugar is extracted from sugarcane during sugar manufacturing process. It is a nutrient which may be used for manurial and other purposes as well. Admittedly, disposal of press-mud was earlier governed by provisions of Order, 1959, which has, however, been repealed since 05.09.2006, vide Sugarcane Press-Mud (Control) (Repeal) Order, 2006. All the present appeals pertain to assessment years prior thereto. Clause 3 of Order 1959 reads as under:-

> "3.SALE OF PRESS-MUD
>
> (1) No producer of sugar shall sell press-mud except to a purchaser who furnishes to him a certificate in writing that he will sell or use the press-mud purchased by him only as manure.

> (2) If a producer of sugar is unable to sell his press-mud during the sugarcane crushing season in accordance with sub-clause (1), he may sell the press-mud after the crushing season for non-manorial purposes after obtaining a permit under clause (4)”

13. As per Central Excise Act, 1944, the term ‘manure’ is described as the one which commonly denotes decomposed farmyard refuse, plant material and animal excreta applied to the soil to increase its productiveness. In the present case, learned Tribunal as well as appellate authority have rejected the claim of appellant on the ground that sale of press-mud has been made to a contractor namely Afsar Ali and not to farmers, therefore, it cannot be presumed that sale was for manurial purposes, thus, in this situation provisions of Order 1959, do not come to rescue of appellant. Relevant portion of order dated 14.09.2009, passed by learned Tribunal, reads as under:-

> “Hence, if the provisions are considered strictly without adding or subtracting anything, it is very much evident that the commodity can be used as manure as well as for non manure purposes and is not covered under the entry 'organic manure' as appearing at entry 38 of schedule 'B' of the Haryana General Sales Tax Act, 1973.
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> Further, the learned counsel for the appellant has placed reliance on (1993) 91 STC 555 in the case of Haryana Land Reclamation & Development Corporation Vs State of Haryana wherein the Hon'ble Punjab and Haryana High Court has held that:
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> "A resume of above would show that to make up the deficiency of sulphur, gypsum is also used as a substitute especially when super phosphate is not available. Primary or major elements are normally used as fertilizers either

separately or in composite form. Other fertilizers carrying secondary essential elements are also necessary for growth, may be secondary in nature or having secondary elements. Gypsum is one these fertilizers and the same is being used as such for a pretty long time as is clear from the passages extracted above from the book "Commercial Fertilizers" by Gilbeart H. Collings. The Punjab Agricultural University has also recommended use of gypsum as a fertilizer. There is, however, no doubt that gypsum is also used in cement industries and for making plaster of Paris. The question, however, in the present case is, whether gypsum sold by the corporation to the farmers was sold as a fertilizer or not. Obviously, the farmers could not use it for a purpose other than as fertilizer, it having in the essential plant nutrient elements required for its growth. Even otherwise, it was never the case of the respondent either before the taxing authorities or this Court that gypsum said by the corporation was used for another purpose than putting into soil.

From the dictionary meanings noticed above, gypsum in our opinion is a material which if added to the soil will result in better growth of plant. Gypsum is thus, a fertilizer when put by the farmers in the earth either before or after sowing the crop. The literature produced by the Corporation also supports the conclusion that gypsum sold to the farmers by the corporation is used in the earth as fertilizer or manure. It is a substitute for the chemical fertilizer. It contains calcium and sulphate. Both are essential plant nutrients Fertilizers now used are mostly chemical fertilizers whereas gypsum is a mineral fertilizer and sold in the form of powder to the farmers. According to the respondent-State, gypsum is used to Improve alkali soil and is, therefore not a fertilizer. The use of gypsum improves alkali soil by reducing the salt contents of the soil and thereby makes it fertile for giving higher yield of the crop. It cannot be accepted that gypsum is used only

> for correction of soil and not as a fertilizer. It is proved from the references noticed above that gypsum is also used in the fields as a direct fertilizer where other fertilizers, such as super phosphate or sulphur in elementary form or otherwise are not available or the nature of soil so requires. It is, however, made clear that we may not be understood to mean that sale of all gypsum falls under entry No. 27 of schedule "B" attached to the Act. The sale of such gypsum made to farmers or cooperative societies, dealing with the sale of fertilizers and solid to farmers and cooperative societies of farmers will be tax free under entry No. 27 of schedule "B" ibid, it being used and understood in common parlance as a fertilizer."

It has been held in unambiguous terms that the sale of gypsum falls under the entry 27 of schedule "B" of the Act only, if it is sold to the farmers or Cooperative Societies.

The facts of the present case are that the goods were sold to one Mr. Afsar Ali who filed affidavit but could not ensure the end use of press mud purchased and sold by him. Thus, we are of the opinion that neither the Sugarcane Press Mud (Control) Order 1959 nor the judgments given by the learned counsel for the appellant come to his rescue. The order of both the authorities below is well founded and needs no interference. The appeals are rejected as the appellant has failed to prove that the goods in question sold only to the farmers and for manure purposes. Disposed of accordingly."

14. It is to be noted that Clause 3(1) of Order 1959 provides that no producer of sugar shall sell press-mud except to a "purchaser", who furnishes a certificate in writing that he will "sell" or use press-mud purchased by him only as manure. Therefore, merely because sale had been made to the contractor who further sold press-mud to the end user, by itself, cannot be

sufficient to reject the claim of appellant and that too when said contractor has admittedly submitted his affidavit/certificate in terms of Clause 3(1) Order 1959. It is to be reiterated that all seven appeals are of the period prior to 01.07.2005 after which press-mud is admittedly exigible to tax at the rate of 4%. Therefore, in the given factual matrix, we find the impugned orders to be unsustainable as it was incumbent upon the Assessing Authority to have examined the matter on factual basis and not dismissed the same only on the premise that press-mud had been sold to a middle man and not to the end user.

15. Questions of law as raised in these appeals are decided accordingly in favour of assessee and against the Department/Revenue to the extent as above.

16. No other argument has been addressed.

17. In the facts and circumstances as above, impugned orders passed in all the seven appeals, as detailed hereunder, are set aside and matters remanded to the Assessing Authority, to consider the same afresh in view of observations in foregoing paras.

Srl No.	**VATAP Number**	**Order passed by Assessing Authority**	**Order passed by Joint Excise and Taxation Commissioner (Appeals) (First Appellate Authority)**	**Order passed by Haryana Tax Tribunal (Second Appellate Authority) in appeal**	**Order passed by Haryana Tax Tribunal in Reference**
1.	VATAP-12-2014	28.02.2005	27.10.2005	14.09.2009	06.04.2011
2.	VATAP-21-2014	03.03.2005	27.10.2005	14.09.2009	06.04.2011
3.	VATAP-22-2014	09.03.2005	27.10.2005	14.09.2009	06.04.2011
4.	VATAP-23-2014	06.01.2006	14.08.2008	14.09.2009	06.04.2011
5.	VATAP-24-2014	20.03.2007	14.08.2008	14.09.2009	06.04.2011
6.	VATAP-112-2014	21.02.2005	27.10.2005	14.09.2009	06.04.2011
7.	VATAP-122-2014	20.03.2007	14.08.2008	14.09.2009	06.04.2011

18. As the matters pertain to the years 1998 to 2005, Assessing Authority is directed to decide the matters after affording an opportunity of hearing to parties in accordance with law in an expeditious manner and definitely within a period of three months of receipt of copy of this order.

19. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

17.09.2025
Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No