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**(2010) 10 P&H CK 0331**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 7720 of 1989

Haryana Distillary

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision:** Oct. 27, 2010

**Acts Referred:**

- Haryana General Sales Tax Act, 1973 - Section 5A, 9

**Citation:** (2011) 41 VST 330

**Hon'ble Judges:** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Allowed

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**Judgement**

Adarsh Kumar Goel, J.

This order will dispose of Civil Writ Petition Nos. 7720 and 7722 of 1989 as common questions are involved in both the petitions.

2. In Civil Writ Petition No. 7720 of 1989 challenge is to the order of assessment Annexure P-1 under the provisions of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act").

3. Case of the Petitioner is that it carries on business of manufacture of liquor and in the process of manufacture paddy husk is used as fuel. The said item is purchased in the State by the Petitioner. The Assessing Authority held the turn over of purchase to be liable to purchase tax u/s 9 of the Act. The order was upheld by the Appellate Authority and the Tribunal.

4. Contention raised in support of challenge to the taxability of impugned turn over is that Section 9 of the Act is attracted only when goods are purchased and used in manufacture of goods or disposed of in any other manner in the course of inter-State sale or export. According to the Petitioner goods purchased as fuel cannot be held to have been used for the purpose of manufacture of goods.

Reliance has been placed upon [Deputy Commissioner of Sales Tax \(Law\), Board of Revenue \(Taxes\), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, .](#)

5. In the reply filed on behalf of the State, it is stated that the Petitioner had not argued before the lower authorities that the paddy husk was used as fuel in the manufacture of liquor. Thus, the turn over was exigible to purchase tax u/s 9 of the Act.

6. We have heard learned Counsel for the parties.

7. The question is whether paddy husk used only as an aid in manufacture falls u/s 9 of the Act. In the order of assessment, it has been observed:

Further the dealer purchased paddy husk without payment of tax from the different sources in Haryana and used it in the manufacture of tax free country liquor. Total value of paddy husk purchased during the year 1984-85 is 681361.38 and the proportionate value of paddy consumed in the manufacture of tax free goods i.e. country liquor is Rs. 365686.65. The Id. Counsel of the dealer pleads that acquisition of paddy husk is made through various contractors to whom Haryana Distillery only pays carriage charges. The dealer as well as counsel were specifically asked to give the names of sources from which they have acquired paddy husk and then directed the contractors to remove the paddy husk dumped by the dealer. The dealer has failed to identify any such source. I think it is nothing but supply by the contractors of the paddy husk required by the dealer. I, therefore, tax the same at the rate of 4%.

8. find merit in the contention that paddy husk used as fuel in the process of manufacture of liquor cannot be held to be used as raw material. Only purpose for which the paddy husk could be used in the process was as fuel. In such a situation judgment of Supreme Court in Thomas Stephen fully applies. Therein goods in question were cashew shells. It was held that since the said goods did not get transformed into the end product, the same could not be held to be used as a raw material. The relevant observations are:

The cashew shells in the instant case, had been used as fuel in the kiln. The cashew shells did not get transformed into the end product. These have not been used as raw materials in the manufacture of the goods. These have been used only as an aid in the manufacture of the goods by the Assessee. Consumption must be in the manufacture as raw material or of other components which go into the making of the end product to come within the mischief of the section. Cashew shells do not tend to the making of the end product. Goods used for ancillary purposes like fuel in the process of the manufacture, do not fall within Section 5A(1)(a) of the Act. Cashew shells, therefore, do not attract levy of tax under the said section. The same is the position with regard to the lime shell and consumed stores, which have been issued only in the maintenance of the kiln and the factory and not used in the manufacture of the end product. The revenue, therefore, was wrong in its contention on this aspect.

9. In view of the above, paddy husk used in manufacture of liquor as fuel cannot be held to be used as raw material for manufacture of liquor so as to attract the provisions of Section 9 of the Act.
10. Accordingly, the writ petitions are allowed and levy of purchase tax on turn over of purchase of paddy husk by the Petitioner is quashed.