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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1822/2016

FERTILISER ASSOCIATION OF INDIA (FAI) & ORS ..... Petitioners

Through: Mr Arvind Nigam, Sr. Advocate with Ms Kavita Wadhia, Mr Nikhil Sharda, Mr Mehtaab Singh Sandhu, Mr Pratishth Kaushal and Mr Shashank Tripathi, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Amit Mahajan, CGSC for UOI with Mr Randeep Sachdeva, Advocate for R-1.
Mr Aditya Singhal and Mr Rajesh Sharma, Advocates for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 29.01.2019

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to respondent no.1 to reimburse additional VAT levied at the rate of 2.5%, imposed by the State of Gujarat on inputs for Urea manufactured during 01.04.2008 to 31.03.2011. In addition, the petitioner also prays that directions be issued to the respondent to reimburse the additional 5% of tax imposed on the natural gas used for manufacturing Urea from 19.02.2010 to 31.03.2011.

2. In terms of the impugned order, the claim for reimbursement of

additional VAT imposed by the States of Gujarat and Uttar Pradesh has been declined. It is held that such reimbursement is not covered in terms of Para 13 of the Scheme, which reads as under:-

> "**13. Taxes on inputs**:
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> For Stage-III, it is decided that sales tax on inputs and other taxes recognised under RPS will be paid on actual basis. Where Value Added Tax (VAT) has been introduced, such on the above taxes as are subsumed in it will be recognised to the extent they are non-vattable.
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> In case of any issue/dispute relating to interpretation of the policy, the decision of Department of Fertilizers shall be final. The above provisions will remain in force during the Stage-III of NPS or until further orders, whichever is earlier."

3. Mr Nigam, learned senior counsel appearing for the petitioner, contends that the decision of the respondent to not reimburse the additional taxes is, per se, discriminatory, as similar tax (purchase tax) levied on natural gas was reimbursed to National Fertilizer Limited (NFL). He also points out that this was one of the grounds urged by the petitioner before the concerned authority, however, the same has not been dealt with.

4. Mr Mahajan, learned counsel appearing for the respondents, seeks time to file an additional affidavit indicating the grounds on which the purchase tax was reimbursed to NFL, under the Scheme. Let an affidavit be filed within a period of three weeks from today.

5. List on 08.03.2019.

VIBHU BAKHRU, J

JANUARY 29, 2019/MK