**(2012) 07 P&H CK 0131**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP No. 7852 of 1993

M/s Garg Rice Mills, Budhlada — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

**Date of Decision :** 16-07-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2012) 07 P&H CK 0131

**Hon'ble Judges :** G.S. Sandhawalia, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Advocate :** Rishab Singla, for the Appellant; Gaurav Garg Dhuriwala, DAG, Punjab, for the Respondent

## Judgement

Ajay Kumar Mittal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of notice dated 17.5.1993 (Annexure P-1). Further, a direction has been sought to be issued to the respondents not to recover purchase tax on the market fees as well as rural development fund paid by the petitioner/dealer to the Market Committee. The petitioner is engaged in the business of rice shelling and as the petitioner had to buy paddy in open auction, it had to pay market fee as well as rural development fund on the purchase of paddy brought from different market yards which was directly payable by the petitioner to the Market Committee. Respondent No.3 framed the assessment of the dealer for the assessment year 1987-88 and had accepted the returns. No tax was levied on the market fees and rural development fund paid by the petitioner to the Market Committee. Respondent No.2, exercising the powers of revisional authority had issued suo moto notice to levy purchase tax on the market fees and rural development fund paid by the petitioner to the Market Committee on the ground that the same was part of turnover. Hence, the present writ petition.

2. We have heard Learned Counsel for the parties.

3. Learned Counsel for the petitioner submitted that no market fee and rural

development fund were chargeable for the purpose of purchase tax.

4. The matter is no longer res integra. this Court in CWP No. 14238 of 1993 (M/s Garg Rice & General Mills, Kharar v. The State of Punjab and another) decided on 15.11.2010 and Tilak Raj Madan Mohan v. Sate of Punjab (2009) 20 VST 351 following the judgment of the Apex Court in State of Punjab and others v. Guranditta Mal Shauti Prakash (2004) 136 STC 12 held that the element of market fee and rural development fund was not to be included in the taxable turnover for the purposes of purchase tax.

5. Accordingly, it is held that the purchase tax is not payable on the market fee and the rural development fund. It is, however, clarified that since the notice, Annexure P-1, had been issued for production of account books under the provisions of Punjab General Sales Tax Act, 1948 and it is not discernible therefrom that it is for levy of purchase tax alone on the market fee and rural development fund, it shall, however, be open for respondent No.2 to assess levy tax on any other turnover of the petitioner, if any, which might have escaped assessment in accordance with law. The writ petition is disposed of accordingly.