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

+ LPA 542/2025

DEPARTMENT OF FERTILIZER & ANR.

.....Appellants

Through: Ms. Arunima Dwivedi, CGSC with Ms. Monalisha Pradhan, Mr. Harpal Singh and Mr. Amit Dutta, Advocates.

versus

PARADEEP PHOSPHATES LIMITED AND ANRRespondents

Through: Mr. Dhruv Mehta, Senior Advocate with Ms. Anushka Sharda, Ms. Raveena Rai, Mr. Hardik Malik and Mr. Anubhav Roy, Advocates.

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Date of Decision: 04.12.2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

CM APPL. 53075/2025 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 53076/2025 (delay in filing the appeal)

3. This is an application seeking condonation of 37 days' delay in filing the appeal. For the reasons stated in the application, the same is allowed. The delay of 37 days in filing the appeal is hereby condoned.
4. The application stands disposed of.

CM APPL. 53077/2025 (delay in re-filing the appeal)

5. This is an application seeking condonation of 13 days' delay in re-filing



the appeal. For the reasons stated in the application, the same is allowed. The delay of 13 days in re-filing the appeal is hereby condoned.

6. The application stands disposed of.

LPA 542/2025 & CM APPL. 53074/2025 (Stay)

7. Present Letters Patent Appeal has been filed challenging the order dated 29.04.2025 passed by the learned Single Judge in W.P.(C) 6085/2019, titled “*Paradeep Phosphates Limited & Anr. vs. Department of Fertilizers & Anr.*”, wherein it has been held that respondent no.1, having satisfied all requisite criteria, was entitled to subsidy under the Nutrient Based Subsidy Policy.

8. The brief facts, shorn of unnecessary details, are as under:-

- a. Respondent no.1 is engaged in the business of import and export of fertilizers. The appellant has promulgated the Nutrient Based Subsidy Policy on 04.03.2010 (hereinafter referred to as “*NBS Policy*”), read with the Notification dated 25.10.2012 and Circular/Letter dated 13.06.2013, under which manufacturers/importers of Phosphatic & Potassic (hereinafter referred to as “*P&K*”) fertilizers are compensated for selling fertilizers to farmers at reduced prices. Under the Fertilizer Control Order (hereinafter referred to as “*FCO*”), fertilizer samples must conform to prescribed specifications, including the water-soluble phosphate (P_2O_5) content. At the relevant time, the minimum required P_2O_5 content was 41%, with a permissible tolerance of 0.5 units; this requirement was later revised in 2017 to 39.5%.
- b. The dispute pertains to the import of 38,947.1 MT of Di-Ammonium Phosphate (hereinafter referred to as “*DAP*”) from a Chinese manufacturer, received at Mundra Port *via* vessel M.V. Arinaga on 08.08.2013. Respondent no.1 dispatched this consignment for sale to



Uttar Pradesh, Madhya Pradesh and Punjab, where the respective States issued State Quality Certificates confirming compliance with FCO standards. However, during unloading, a sample drawn by the Senior Fertilizer Inspector, Central Fertilizer Quality Control & Training Institute, Faridabad (hereinafter referred to as “CFQC&TI”), was analysed and declared non-standard vide report dated 02.09.2013, as the water-soluble P₂O₅ content was found to be 39.53%, which is below the then-required 41%. Upon respondent no.1’s request, the sample was retested by the State Fertilizer Quality Control Laboratory (hereinafter referred to as “SFQCL”), Jodhpur, which, vide referee analysis dated 30.01.2014, again declared it non-standard, reporting P₂O₅ at 39.44%.

- c. On account of the above findings, respondent no.1’s subsidy claim under the NBS Policy was withheld, as communicated through letters dated 13.12.2013 and 02.07.2014. Respondent no.1 pursued multiple representations and also forwarded both laboratory reports to Indian Council of Agricultural Research (hereinafter referred to as “ICAR”) seeking expert clarification on whether a reduction of 1.47% in water-soluble P₂O₅ in DAP would materially affect nutrient availability. ICAR, vide letter dated 12.11.2014, opined that fertilizers containing 85% of total citrate-soluble P as water-soluble P are equivalent to 100% water-soluble P. After its representations yielded no favourable outcome, respondent no.1 approached this Court through W.P.(C) 12080/2018. Vide order dated 13.11.2018, this Court directed consideration of its representation, which was ultimately rejected by order dated 18.02.2019, leading to the filing of the underlying writ petition.



d. The learned Single Judge, by the impugned order dated 29.04.2025, allowed the writ petition and held that respondent no.1 fulfilled all criteria and was entitled to subsidy.

e. Hence, the present appeal.

9. Ms. Arunima Dwivedi, learned Central Government Standing Counsel (CGSC) appearing for the appellant submits that the learned Single Judge has not considered two relevant aspects, which go to the root of the matter. She submits that the learned Single Judge erred in taking into consideration the minutes of the meeting dated 09.03.2012 as a decision, while the rectification in the FCO was done only in the year 2017. According to her, the minutes of the meeting cannot be deemed to be a rectification or an amendment in the FCO and as such treating the minutes of the meeting as a decision is a palpable error on the part of the learned Single Judge.

10. The other aspect which the learned CGSC submits is that the amendment based on the minutes of the meeting dated 09.03.2012, which was carried out finally in the year 2017, could not be applied retrospectively. In other words, she states that it could only be from the year 2017 onwards that the amendment/rectification of the water soluble phosphate (P per cent by weight of 39.5%) can be made applicable. She states that in the present case, since the samples were drawn in the year 2013, the benefits of the amendment/rectification could not be made applicable to the said sample retrospectively.

11. *Per contra*, Mr. Dhruv Mehta, learned senior counsel refuted the submissions of the appellant. He states that the controversy sought to be raised by the appellant before this Court is not even relevant. According to the learned senior counsel, the entitlement to subsidy in respect of import of the consignment of fertilizer by respondent no.1 arises from the NBS Policy read



with Notification dated 25.10.2012 and not the FCO. He states that the FCO is only for the purpose of ascertaining as to whether the fertilizer imported has the water solubility over the citrate solubility of various fertilizers. According to him, the basic criteria, which is to be met by respondent no.1 is the certificate to be issued by the State in which such fertilizer is being distributed. Having regard to the fact that such certificates were furnished to the respondent no.1 by various States, without any complaints submitted within 180 days as stipulated in para 7 of Notification dated 25.10.2012, itself would entitle the respondent no.1 to the subsidy.

12. That apart, he submits that the minutes of the meeting dated 09.03.2012 were also followed by correspondence from ICAR *qua* the respondent no.1 and the fertilizer it imported. By the letter dated 12.11.2014, ICAR clarified the position based on the report of the Technical Committee, which aligned itself with the minutes of the meeting dated 09.03.2012. He thus submits that the learned Single Judge has correctly passed the impugned order.

13. He relies upon the judgment of the Division Bench of the Madras High Court in *W.A. No.2584/2022* titled “*Government of India & Ors. vs. M/s. Greenstar Fertilisers Ltd.*” decided on **02.11.2023** to contend that in an identical situation, the Madras High Court had upheld the minutes of the meeting dated 09.03.2012. In fact, he also states that the Government of India had challenged the said order passed by the Madras High Court by way of an SLP(C) No.5100/2024 before the Hon’ble Supreme Court, which was dismissed on 30.04.2024. In that context, he contends that the issue being no more *res integra*, the appeal is bereft of any merit and ought to be dismissed.

14. We have heard the learned counsel for the parties and perused the records of the case. We have also had the benefit of the judgment of the Division Bench of the Madras High Court in *Greenstar Fertilizers (supra)*.



15. According to us, the only question to be considered is whether the decision reached by the Committee in the meeting held on 09.03.2012 was a conscious decision and whether the benefit of such decision could enure to the respondent no.1. It may also be relevant to consider as to whether the actual amendment carried out in the FCO in the year 2017 could be said to not apply, retrospectively.

16. We find from the impugned order that the learned Single Judge has treated the minutes of the meeting dated 09.03.2012, as a conscious decision which was carried out in the FCO in the year 2017, which was taken to be only an administrative delay and therefore, on that basis concluded that the benefit could accrue to the respondent no.1.

17. Apart from the minutes of the meeting dated 09.03.2012, we find from the record that the Ministry of Chemicals and Fertilizers, by the letter dated 31.10.2014, sought clarification from ICAR in regard to the aforesaid controversy. The contents of the letter dated 31.10.2014 are extracted hereunder:-

“...I am directed to refer to the subject mentioned above and to say that a consignment of DAP imported through ship, M.V. Arinaga by M/s Paradeep Phosphates Ltd has been declared non-standard on account of less Water Soluble P₂O₅ content after sample analysis followed by referee analysis under FCO.

2. The DAP, which has been declared substandard is meeting the Citrate Soluble P₂O₅ content 46% as per FCO standard. But the water soluble P₂O₅ content is 39.53% against 41%. The copies of analysis report of initial sample and referee sample are enclosed herewith.

3. You are requested to furnish your comments on the above said issue in general and with specific reference to whether 1.47% reduction in the Water Soluble P₂O₅ content in DAP will affect availability of P₂O₅ to farmers and if so to what extent...”

18. By the letter dated 12.11.2014, ICAR clarified that its Technical Committee, after reviewing the existing literature, opined that the relative efficacies of water soluble and water insoluble but citrate soluble P in the



fertilizers depends on various factors. However, in general the efficiency of P fertilizer may be considered at par upto a water soluble content of 85% as a percentage of citrate soluble P in the fertilizer. Meaning thereby, fertilizers having 85% of total citrate soluble P as water soluble P are at par with 100% water soluble P. It would be apposite to extract the said letter dated 12.11.2014 hereunder:-

“... I am to refer to your letter No.15011/14/2014-MPR dated 31.10.2014 on the subject mentioned above. The matter has been examined in the Council. It may be mentioned that a Technical Committee was earlier constituted by the DG(ICAR) on request from DAC under the Chairmanship of then DDG(NRM) Dr. A.K. Singh with Director, IISS Bhopal, Head Division of Soil Science, IARI New Delhi as Members for examination of various issues pertaining to citrate vs. water soluble P content in the fertilizers. The Recommendations of the Expert Committee is enclosed. The Committee after reviewing the existing literature opined that the relative efficacies of water soluble content of 85% as % citrate soluble in the fertilizer. This means, fertilizers having 85% of total citrate soluble P as water soluble P is at par with 100% water soluble P. Further it was stated that the agronomic efficacy of fertilizers containing as low as 60% citrate soluble P is also equally good under certain soil situations (low pH very high P fixing soils) and P efficient crops.

Accordingly, the DoF may take appropriate decision of its own on this issue as deemed fit.

This issues with the approval of DDG (NRM)... ”

19. The above letter was predicated on the detailed report of the Technical Committee which had given its independent analysis on the issue. It is appropriate to extract the relevant paragraphs of the Technical Committee Report dated 12.11.2014 hereunder:-

5. The issue of water soluble P₂O₅ deficiency in P&K fertilizers has already been examined in consultation with ICAR in this case. The ICAR In its reply has stated that the Technical Committee constituted by the DG, ICAR on the behest of DAC opined that the relative efficacies of water soluble and water insoluble but citrate soluble P in fertilizers depend on various factors. However, in general, efficiency of P fertilizers may be considered at par upto a WS content of 85% as % of citrate soluble P in the fertilizer. This means, fertilizers having 85% of total citrate soluble P as water soluble P is at par with 100% WS P. The ICAR has further stated that the agronomical efficiency of fertilizers containing as low as 60% CS P is also equally good under certain soil situations and P efficient crops. Based on the above, the



ICAR advised this Department to take appropriate decision of its own on this issues as deemed fit.

6. In order to resolve the issue, it was decided to have meeting at the level of JS with representatives from DAC and ICAR and a meeting was proposed to be held on 17.12.2014. However, the meeting could not be held. Now that as per the minutes of the Secretary (A&C), the DOF is to Initiate action on the Issue relating to release/recovery of subsidy on fertilizers depending upon the value of its parameters; the Issue can be examined by DOF keeping in view the heavy losses to fertilizer companies on account of non-payment of subsidy on fertilizers declared non-standard even on account of slight deviation without affecting much to the farmers and without the intention of the company to defraud the farmers. Further, difference in analysis result from one lab to another also raises doubts over the manner of collection of samples, analysis procedure etc. Under FCO there is provision for referee sample and if the analysis report of referee sample is found in order the findings of the original sample is ignored even if the laboratory, where the referee sample has been analysed is less equipped. There have been many instances, where the samples failed at the Faridabad Central Lab has been declared standard based on the report of State Fertilizer Labs. This also raises doubts on the procedure and standard of analysis procedure, equipment etc of the laboratories.

7. In the case of the consignment of DAP imported by PPL, both the lab reports show different moisture content and different WS & CS P2O5 content. But the CS P2O5 content of the DAP, based on which the NBS is being paid, is within the minimum level fixed under FCO. The CS P2O5 content of the Imported OAP, though not as per the FCO limit, but within the 85% of CS P2O5 and agronomically equal value as per the technical advice tendered by ICAR on a reference to this effect.

(emphasis supplied)

20. From the aforesaid correspondences and the Technical Committee report, particularly para 7, it is clear that the citrate soluble P₂O₅ content of the DAP imported by the respondent no.1 based on which the subsidy was to be paid, is within the minimum level fixed under the FCO. Even though the said limit is not as per the FCO stipulation, yet it was found to be within the 85% of citrate soluble P₂O₅ and agronomically equal value as per the technical advice tendered by ICAR. When such a clear opinion has already been rendered by a Technical Committee, which comprised of experts of the area concerned, with regard to the DAP imported by the respondent no.1, we fail



to appreciate as to on what grounds the appellant is refusing to pay the subsidy under the NBS Policy. Perusal of the record also reveals, not only was consignment tested in accordance with FCO in the registered laboratories in the States where the DAP was to be distributed, but the said consignment was distributed with no consumer or the State representative having complained in regard to the quality of DAP. According to para 7 of the Notification dated 25.10.2012, the State was obliged to send complaints within 180 days in respect of the sub-standard quality of imported DAP which alone would have disentitled the importer from claiming reimbursement or subsidy under NBS Policy. No such complaint has been placed on record by the appellant. In the absence of such complaint, there can be no plausible reason to deny NBS.

21. In fact, it is relevant to note that the Technical Committee in para 6 of its report has also considered situations where the samples which have been drawn may end up with different results, one at the Faridabad Lab and the other at the State Fertilizer Labs. It was in that background that the Technical Committee has rendered its opinion in para 8 of the report, which is as under:-

“8.Under NBS Policy the present subsidy on P&I fertilizers constitute 35 to 45% of the delivered cost. At present the fertilizer Industry is working under highly controlled environment and the profit margins are very limited. Under the circumstances any non-payment of subsidy on the fertilizer already sold at subsidized rate, will affect the economics of the fertilizer industry to a great extent. Further, under FCO the non-subsidized fertilizers are also subjected to similar sampling and analysis. In case of failure of a sample, the punishment is suspension, cancellation or debarment as per details in FCO under chapter “IX Miscellaneous. However, there has been no specific reference to non-payment of subsidy neither under FCO nor under subsidy scheme. However, since under rule 19 (a) of FCO no person is eligible to manufacture/ Import any fertilizer for sale, which is not of prescribed standard, we are not paying any subsidy once the fertilizer is declared non-standard. In respect of non-subsidized fertilizers already sold before the analysis report is communicated, the only action available under FCO is suspension, cancellation of licence to manufacture or sale or debarment from manufacture or sale. Thus, the punishment for failure of sample varies from subsidized to non-subsidized



fertilizers and the punishment in respect of subsidized fertilizers is severe. Similarly, the gravity of the non-standard fertilizer has not been dealt with in FCO treating sub-standard due to both intentional and non-intentional categories at same level. Under the circumstances, making non-eligible a company for entire subsidy for even minor variation in any one standard parameter of the fertilizer without affecting the value of the fertilizer, makes the provision harsh.”

22. In view of the above, it can be safely inferred that the rectification of P₂O₅ percent of 39.5% which was carried out in Schedule-I of the FCO in the year 2017, having been based on a decision finalized *vide* the minutes of the meeting dated 09.03.2012 followed by the Technical Committee report of ICAR, was only a clarification and correction of the error which may have crept in the original FCO. Thus, the question of the same not being applicable retrospectively does not also arise as the clarification would relate back to the date when the original FCO was issued. [See: ***Sree Sankaracharya University of Sanskrit & Ors. vs. Dr. Manu & Anr.: (2023) 19 SCC 30***]

23. Once ICAR and the Technical Committee as also the meeting held on 09.03.2012 were of the firm opinion that the citrate soluble P₂O₅ content of the DAP imported by the respondent no.1, based on which the subsidy was being paid, is within the minimum level fixed under the FCO, the imported DAP could not be stated to be sub standard. Even though the said limit was not as per the FCO stipulation, but was found to be within the 85% of citrate soluble P₂O₅ and agronomically equal in value as per the technical advice. In view of the specific opinion, we infer that the technical experts did consider the imported DAP to not be sub standard. If that is so, the question of the respondent no.1 not being entitled to subsidy under NBS Policy does not arise and is unsustainable.

24. Learned Single Judge has also made pertinent observations as under:-

“8. The issue which arises for consideration in the present case is whether the consignment of the petitioner failing to meet the standards for water soluble



phosphate (P_2O_5) content in the Analysis Report would affect the petitioners claim for subsidy, despite the concerned States giving the requisite Quality Certificates. Section 19 of the FCO states that no person shall sell, import for sale any fertilizer which is not of prescribed standard. The procedure for release of fertilizer subsidy under the Subsidy Scheme was modified vide notification dated 25.10.2012. The said communication also contains the details pertaining to State Certification for Quantity and Quality. It reads as follows:-

“6. State Certification for Quantity - States shall send certificate w.r.t. the quantity {as per Proforma B1) and quality (as per Proforma B2), with the proviso that quantity will be certified on line within 30 days on the IT enabled system, and quality, when once tested within six months. **Short and sub-standard quantity as reported by the State will not be eligible for subsidy and the subsidy paid will be recovered from the companies. A 30-day window will be made available for the States on the transparency portal to report any discrepancies in the quantity of Fertilizers. In case State certification for quantity for P&K and Urea is not submitted within 30 days, it shall be deemed as no discrepancies on quantity reported by State agencies and the payments will be processed for manufacturers'/importers' balance claims. Proforma-B1 and Proforma-B2 will be sent shortly.**

7. State Certification for Quality - Currently Proforma-B is required for P&K and SSP for quality certification from States. Now, two sets of Proforma. i.e., B1+B2 will be used for all subsidized fertilizers. Considering the delays in getting requisite Proforma from States, **a 180-day window will be made available for the States on the transparency portal to report any discrepancies in the quality of Fertilizers reported. The State Government/Union Territories concerned will have to certify the receipt of fertilizers within the stipulated time. In case they do not certify, the alert will be sent to the State Governments that the Proforma 'B2' certification has not been received and no allocation as per the supply plan for respective State Government/Union Territory for subsequent month will be made in the Fertilizer Monitoring System.**”

A perusal of the extract reproduced hereinabove would make it evident that fertilizers of sub-standard quality would not be eligible for subsidy, and in fact, the subsidy, if paid already, would be entitled to be recovered. The extract further provides that the declaration to sub-standard quality is to be reported by the states in the form of Proforma B-2 which is the State Quality Certificate. The States are supposed to inform the number of samples which failed and the quantity of fertilizers affected which shall not be eligible for subsidy to the respondents. In the present case, these State Quality Certificates in Proforma B2 were duly issued by all the State Governments to which the Consignment was dispatched for sale, being the States of U.P., Punjab, and Madhya Pradesh, and the same have been placed on record. These certificates state that samples have been tested in a notified laboratory as per FCO and found to be



standard and eligible for subsidy. Nothing has been brought on record by the respondents to show that any of the abovementioned states declared the quality of the fertilizers to be substandard. The respondents, without receiving a complaint from any State, could not have stopped the payment of the subsidy to the petitioner No.1 of its own accord. A reference may be made to the decision of the Division Bench of Madras High Court in *Greenstar Fertilizers (Supra)* wherein the Court came to a similar conclusion and held as follows:-

“13. Even though the learned Deputy Solicitor General of India had relied upon the office memorandum, dated 25.10.2012, the said office memorandum itself clearly prescribes that the States have to certify the quantity as per paragraph No. 6 and quality as per paragraph No. 7 in the proforma. Once the States certify the quality, the payments have to be made”

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“From a reading of the above, it would again be clear that the release or recovery has to be made depending on the certification of the States. Therefore, we are not able to accept the contention of the learned Deputy Solicitor General of India that merely because it is mentioned that the department will effect recoveries from the subsequent bills, the same would vest the power in the department even in the absence of any complaint as to the sub-standard quality and in the teeth of the certification of quality by the concerned States as per the paragraph No. 7. Therefore, we are in agreement with the learned Single Judge that the appellants' action in resorting to recovery of the amounts was not in accordance with law.”

9. Though the aforesaid decision was challenged before the Supreme Court by way of SLP(C) No. 5100/2024 which came to be dismissed vide order dated 30.04.2024. The said decision having attained finality, though not binding holds a persuasive value. The impugned order has disregarded these certificates by stating that there is no proof that the fertilizers in respect of which the certificates were issued were part of the same consignment that was found to be of sub-standard quality. A perusal of these certificates would show that the name of the product is mentioned as DA Imported and the month for which Quality Certificate is being issued is mentioned as August 2013, when the shipment was imported via Mudra port. The petitioner has also placed on record Railway Receipt, Stock Transfer advices, and the Freight Claim Bill No.Imp/PPL/0913/4029 dated 18.09.2013 alongwith statement of dispatch from vessel M.V. Arinaga of the Imported DAP in the month of August 2013. As is evident from the petitioner No.1's letter dated 13.02.2019, a detailed breakdown of the dispatched fertilizer consignment was provided to the respondents, however, the impugned order does not deal with the proof put forth by the petitioner No.1, nor does it call for further proof.”

(Bold portion as per impugned order)

25. Apart from the above, we are fortified in our view by the judgement rendered in *Greenstar (supra)* by a Division Bench of Madras High Court



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dated 02.11.2023. The Special Leave Petition filed by the government was also dismissed.

26. In view of the aforesaid, the present appeal is dismissed alongwith pending applications, if any.

**TUSHAR RAO GEDELA
(JUDGE)**

**DEVENDRA KUMAR UPADHYAYA
(CHIEF JUSTICE)**

DECEMBER 4, 2025

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