**(2007) 03 AHC CK 0051**

**In the Allahabad High Court**

Commissioner of Trade Tax APPELLANT

Vs

D.R. Zindal and Sons RESPONDENT

**Date of Decision :** 01-03-2007

**Acts Referred:**
Uttar Pradesh Trade Tax Act, 1948 — Section 11

**Citation :** (2008) 14 VST 58

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

## Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") is directed against the order of the Tribunal dated September 26, 2000 for the assessment year 1995-96.

2. On the basis of information received that the dealer/opposite party had received a sum of Rs. 9,86,018.71 from Dugdh Utpadan Sahkari Sangh Limited, Bulandshahar, a proceeding u/s 21 of the Act was initiated. It has been alleged by the assessing authority that the dealer had provided chilling plant to Dugdh Utpadan Sahkari Sangh Limited, Bulandshahar for chilling of milk and water at a particular temperature. Therefore, the receipt was liable to tax u/s 3F of the Act for transfer of right to use the goods. Claim of the dealer was that under the contract, the dealer was to supply the milk and water at a specified temperature and the chilling plant was never transferred to Dugdh Utpadan Sahkari Sangh Limited, Bulandshahar and has always remained in its possession. It was also submitted that the payment was made at Rs. 2.75 per kg. for the aforesaid job. The assessing authority had not accepted the plea of the dealer on the ground that the payment of electric charges was made by Dugdh Utpadan Sahkari Sangh Limited, Bulandshahar and the dealer was not able to tell how many persons were employed for operation. Plea of the dealer was accepted by the first appellate authority which has been confirmed by the Tribunal.

3. Heard the learned Standing Counsel.

 

4. I have perused the order of the Tribunal and the authorities below.

5. Both the appellate authorities have recorded the categorical finding of fact that under the agreement, the dealer had provided milk and water at a specified temperature and chilling plant as such, was not transferred for the use. Necessary expenses were also borne by the dealer. It has also been observed that under the agreement in case of failure of power, chilling would be carried on by ice. This shows that the chilling plant as such, was not transferred for use and the agreement was to provide milk and water at a specified temperature.

6. In the case of Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, the apex court held that the delivery of the possession of the goods at some stage is necessary for transfer of right to use the goods. In the absence of delivery of possession of chilling plant to Dugdh Utpadan Sahkari Sangh Limited, Bulandshahar for use, the case did not fall under the transfer of right to use the goods.

7. On the facts and circumstances of the case, both the appellate authorities nave rightly held so. The revision is devoid of any merit and is liable to be dismissed.

8. In the result, revision fails and is, accordingly, dismissed.

 