**(2008) 07 AHC CK 0204**

**In the Allahabad High Court**

Commissioner, Trade Tax — APPELLANT

Vs

Sagar Mal Ram Swaroop — RESPONDENT

**Date of Decision :** 04-07-2008

**Acts Referred:**

Uttar Pradesh Trade Tax Act, 1948 — Section 13A(4)

**Citation :** (2009) 26 VST 543

**Hon'ble Judges :** Prakash Krishna, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Prakash Krishna, J.—The above revision is directed against the order dated December 7, 1998 passed by the Trade Tax Tribunal, Allahabad, in second appeal No. 280 of 1994 relevant to the assessment year 1992-93 whereby and whereunder it has confirmed the order of the first appellate authority deleting the penalty levied u/s 13A(4) of the U.P. Trade Tax Act, 1948.

2. Two authorities below including the Tribunal have recorded a finding of fact that the transaction in question was duly recorded in the account books of the dealer-opposite party. The penalty was levied by the assessing officer on the ground that from the account books it does not appear as to whether the transaction was inter-State or not.

3. The Tribunal took the view that the nature of the transaction will be examined at the time of the assessment itself and deleted the penalty. Having heard the counsel for the parties, I do not find any infirmity in the order of the Tribunal. u/s 13A(4) a penalty can be levied only in two circumstances, namely, (i) if the goods are not recorded in the account books of dealer or (ii) the goods are not traceable to a bona fide dealer. On the facts found in the present case that the transaction in question was duly recorded in the account books, no ease for levy of penalty under the afore-stated section has been made out.

4. There is no merit in the revision. The revision is dismissed with cost of Rs.

1,000.

 