**(2007) 09 AHC CK 0047**

**In the Allahabad High Court**

Commissioner, Trade Tax — APPELLANT

Vs

Sri Ram — RESPONDENT

**Date of Decision :** 13-09-2007

**Acts Referred:**
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 3F

**Citation :** (2009) 20 VST 747

**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 Tribunal dated April 6, 2004 relating to the assessment year, 1999-2000.

2. The brief facts of the case are that the opposite party was the owner of the bus No. U.P. 56-3625 and provided the said bus to UPSRTC under the agreement dated August 27, 1997. The assessing authority levied the tax on the amount received towards hire charges from UPSRTC for providing the bus u/s 3F of the Act. Against the assessment order, opposite party filed appeal before the Joint Commissioner (Appeals), Trade Tax, Gorakhpur, which was dismissed. Opposite party further filed appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal and deleted the tax levied u/s 3F of the Act.

3. Heard Sri B.K. Pandey, learned Standing Counsel and Sri Ram Bilas Yadav, learned Counsel appearing on behalf of the dealer.

4. Learned Standing counsel submitted that as per Clause 1 of the agreement during the period of the agreement, the possession of the vehicle was under the control of the UPSRTC. Thus, under the agreement there was transfer of right to use the bus by the opposite party to UPSRTC and, thus, the amount received towards hire charges has rightly been assessed to tax u/s 3F of the Act. Learned Counsel for the opposite party relied upon the order of the Tribunal. In support of his contention he relied upon the decision of the apex court in the case of Bharat

 

Sanchar Nigam Ltd. v. Union of India reported in [2006] 145 STC 91 : [2006] 3 VST 95 : [2006] 29 NTN 307.

5. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

6. Section 3F of the Act reads as follows:

Section 3F. Rate of tax on the right to use any goods or goods involved in the execution of a works contract.--Notwithstanding anything contained in Section 3A, or Section 3AAA or Section 3D, the turnover relating to the business of transfer of the right to use any goods for any purpose or of transfer of the property in the goods whether goods or in some other form involved in the execution of a works contract shall be determined in the manner prescribed and shall be liable to tax at such rate, not exceeding fifteen per cent, as the State Government may, by notification, declare, and different rates may be declared for different goods or different classes of dealers.

7. It would be relevant to reproduce Clause (1) of the agreement dated August 27, 1997.

f}rh; i{k }kjk miyC/k djk;h x;h feuh cl la[;k&;w0ih0&58@3635 ekMy 1997 jftLV? s''ku frfFk 07&08&1997 O;kikd chek ikfylh la[;k&798507 oS/krk 02&06&98 le; ij miyC/k djk;h tk;sxh] vuqca/k vfo/k esa izFke i{k ds gokys jgsxh rFkk cl dk Lokf/ kdkj vkSj fu;a=.k izFke i{k ds v/khu jgsxk] fdUrq cl dk LokfeRo f}rh; i{k dk gh jgsxk A

8. As per the agreement, the possession and control of the vehicle remained with UPSRTC, during the period of contract, which shows that the possession was transferred by the opposite party to the UPSRTC for use. In the case of Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, the Constitution Bench of the apex court held that in a case of transfer of right to use, the goods should be in a deliverable stage and at some stage it should be delivered. In the present case, as per the agreement, the possession has been transferred to UPSRTC and remained with the UPSRTC during the period of agreement and the control and possession was of UPSRTC for the use of the vehicle. Therefore, the present case squarely falls within the purview of provision of Section 3F of the Act. The Tribunal has illegally deleted the penalty without appreciating the provision of Section 3F of the Act.

9. In view of the above, the order of the Tribunal is liable to be set aside.

In the result, revision is allowed. The order of the Tribunal is set aside.

 