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**(2010) 09 UK CK 0090**

**In the Uttarakhand High Court**

**Case No : Trade Tax Revision No. 21 of 2009**

Sanjay Agarwal

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

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**Date of Decision : 22-09-2010**

**Acts Referred:**

Uttar Pradesh Trade Tax Act, 1948 — Section 2

**Citation :** (2010) 2 UD 420 : (2011) 38 VST 484

**Hon'ble Judges :** V.K. Bist, J; Tarun Agarwala, J

**Bench :** Division Bench

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**Judgement**

1. Heard Sri M. L. Agarwal, the learned Counsel for the applicant/revisionist and Sri K.P. Upadhyay, Additional Chief Standing Counsel for the Respondent.
2. The present trade tax revision relates to the assessment years 1998-99 (State) and 1999-2000 (State). For the aforesaid assessment years, the revisionist submitted its return disclosing that it had charged separately the trade tax as well as the freight charges in the bills and consequently, claimed exemption from payment of tax in view of the definition of "turnover" as contained in Section 2(i), Explanation II(i) of the Trade Tax Act, 1948. The assessing authority disallowed the exemption against which an appeal was filed which was allowed and the matter was remitted back to the assessing authority. The assessing authority passed a fresh assessment order, which was verbatim with the earlier assessment order and again disallowed the exemption. The revisionist being aggrieved, filed an appeal which was rejected and thereafter preferred a second appeal before the Trade Tax Tribunal which was also dismissed.
3. For the assessment year 1999-2000, the exemption was again disallowed and ultimately the second appeal was also filed before the Tribunal. Both the appeals were heard together and dismissed against which two separate revisions have been filed before this Court.

4. The revisionist is engaged in the manufacture and sale of corrugated boxes and was given a tax holiday for seven years and became eligible to tax for the first time in the year 1993. At that stage, when the revisionist was being assessed for trade tax, the revisionist charged freight charges and trade tax separately in the bills issued to the purchasing parties. The said bills were seen and verified by the assessing authority and, on that basis, exemption from the turnover was granted to the revisionist in the said assessment year. Since then, the revisionist is being granted exemption in its turnover in the subsequent years.

5. However, for the assessment years in question, the assessing authority changed its opinion and included freight and sales tax in the turnover.

6. The only question which arises for consideration in this revision is with regard to the tax liability on a dealer with regard to freight charges and trade tax. The revisionist has relied upon the definition of Section 2(i), Explanation II(1) of the U.P. Trade Tax Act, 1948 which defines "turnover" as under:

(i) the amount for which goods are sold or purchased shall include the price of the packing material in which they are packed, and any sums charged for anything done by the dealer in respect of the goods sold, at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realized as trade tax on sale or purchase of goods, when such cost or amount is separately charged.

7. The aforesaid provision clearly indicates that if freight and trade tax is charged separately and is also realized separately then the amount, so realized, cannot be treated as part of the turnover. The tax liability with regard to freight charges and trade tax can only be fixed on a categorical finding being given, namely, that the freight charges and trade tax has not been realized separately and that it was inclusive of the price of the goods sold. It was, therefore, incumbent upon the assessing authority to examine all the bills and give a specific and categorical finding as to how much of the amount as freight charges was realized separately and how much was it realized inclusively.

8. In the present case, the consistent stand of the revisionist is, that he had charged freight charges as well as trade tax separately in the bills and that the amount was not inclusive of the price of the goods. This fact has been admitted by the trade tax authorities but the claim for exemption has been rejected on the ground that there was a prior agreement between the Assessee and the purchaser for the supply of the goods at a price which was inclusive of trade tax and freight charges.

9. In our opinion, the assessing authority has committed a manifest error in presuming certain events hypothetically, which is not based on any document on record. The record clearly suggests, namely, the bills, that the price of goods was charged separately and that the trade tax and the freight charges were charged separately. This was the best evidence which could not be ignored by the assessing authority. There is no agreement between the parties except the offer

made by the purchaser and the certificate issued by the purchaser which also clearly indicates that as per the arrangement made between the parties, freight and trade tax was required to be charged separately. Consequently, the assessing authority committed a manifest error in rejecting the certificate and including the trade tax as well as the freight charges in the turnover.

10. In *Hyderabad Asbestos Cement Products, U.P. Border Ghaziabad v. Commissioner of Sales Tax, U.P., Lucknow* [1999] 114 STC 564 (All) ; [1999] 14 NTN 90, it was held that insurance charges raised separately in the bills, which is covered under cost of deliver)", does not form part of turnover and that the dealer is entitled for exemption under Sub-clause (i) of Explanation II of Section 2 of the Act.

11. Similar view also held in *CST v. M. P. Traders* [1979] LD 144, *Tata Timken Limited, Noida v. Commissioner of Trade Tax* [1999] UPTC 685.

12. In *State of Karnataka and Another Vs. Bangalore Soft Drinks Pvt. Ltd.*, , the Supreme Court also held that where freight charge was collected separately, the same was not includible in the taxable turnover of the seller.

13. In the light of the aforesaid, the court is of the opinion that in view of the evidence filed by the revisionist, the Assessee was entitled for exemption of freight and trade tax in its turnover and the assessing authority committed a manifest error in including the trade tax and freight charges in the turnover of the revisionist. In view of the aforesaid, the impugned orders, namely, the assessment order, the appellate order as well as the second appellate order cannot be sustained and are quashed. The revision is allowed. The assessing authority is directed to pass a consequential assessment order giving exemption to the Assessee with regard to freight and trade tax for the assessment years in question.