

पत्रांक 13 / आयु0क0उत्तरा0 / विधि-अनुभाग / वाणिज्य कर / 09-10 / देहरादून।

कार्यालय:-आयुक्त कर उत्तराखण्ड  
(विधि-अनुभाग)  
देहरादून::दिनांक 02 अप्रैल, 2009

समस्त डिप्टी कमिश्नर, वाणिज्य कर  
समस्त असिस्टेंट कमिश्नर, वाणिज्य कर  
समस्त वाणिज्य कर अधिकारी।

उत्तर प्रदेश राज्य सड़क परिवहन निगम (UPSRTC) द्वारा विभिन्न व्यक्तियों से बसों का अनुबन्ध किया जाता है तथा अनुबन्धित बस पर सभी अधिकार तथा नियन्त्रण निगम का रहता है तथा परिवहन निगम द्वारा इस सम्बन्ध में बस उपलब्ध कराने वाले व्यक्ति/व्यापारी को भुगतान किया जाता है। इस पर उत्तर प्रदेश व्यापार कर अधिनियम 1948 के तहत उपयोग करने के अधिकार के अन्तर्गत के सम्बन्ध में मान0 उच्च न्यायालय इलाहाबाद के समक्ष मामला प्रस्तुत हुआ मान0 उच्च न्यायालय इलाहाबाद द्वारा अपने निर्णय **Commissioner Trade Tax U.P. Lucknow Vs Sri Ram[2009] 20 VST 747(ALL)** द्वारा निम्न प्रकार मत दिया गया:-

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. V. Union of India [2006] 145 STC 91 (SC); [2006] 3 VST95 (SC), 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.

उक्त निर्णय की प्रति इस आशय के साथ आपको प्रेषित की जा रही है कि मान0 उच्च न्यायालय इलाहाबाद द्वारा दिये गये उक्त निर्णय के परिप्रेक्ष्य में इस प्रकार के मामलों में नियमानुसार विधिक कार्यवाही किया जाना सुनिश्चित करें।  
संलग्न-उपरोक्तानुसार।

(वी0के0सक्सेना)  
प्रभारी कमिश्नर वाणिज्य कर  
उत्तराखण्ड, देहरादून।

पृ०प०सं० 13, /दिनांक उक्त।

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1-प्रमुख सचिव, वित्त उत्तराखण्ड शासन देहरादून।
- 2-महालेखाकार, उत्तराखण्ड वैभव पैलेस इन्द्रा नगर देहरादून।
- 3-अध्यक्ष/सदस्य वाणिज्य कर अधिकरण देहरादून/हल्द्वानी।
- 4-एडिशनल कमिश्नर, वाणिज्य कर गढ़वाल जोन देहरादून/कुमाऊँ जोन रूद्रपुर।
- 5-एडिशनल कमिश्नर (आडिट)/प्रवर्तन वाणिज्य कर मुख्यालय देहरादून।
- 6-समस्त ज्वाइंट कमिश्नर (कार्य०) वाणिज्य कर देहरादून/हरिद्वार/काशीपुर/हल्द्वानी को इस निर्देश के साथ प्रेषित कि वे उक्त परिपत्र की अतिरिक्त प्रतियां कराकर अपने अधीनस्थ अधिकारियों/बार एसोसिएशन के पदाधिकारियों/व्यापारी संगठनों के अध्यक्ष/सचिव को उपलब्ध कराने का कष्ट करें।
- 7-ज्वाइंट कमिश्नर (अपील) वाणिज्य कर देहरादून/हल्द्वानी।
- 8-ज्वाइंट कमिश्नर (वि०अनु०शा०/प्र०) वाणिज्य कर हरिद्वार/रूद्रपुर।
- 9-वरिष्ठ तकनीकी निदेशक, एन०आई०सी० सचिवालय परिसर देहरादून को इस आशय से प्रेषित कि वे उक्त परिपत्र को वाणिज्य कर विभाग की वेबसाइट पर प्रसारित करने का कष्ट करे।
- 10-श्री राकेश वर्मा, महासचिव, उत्तराखण्ड वाणिज्य कर सेवा संघ 2/5 आर्शीवाद इनकलेव देहरादून।
- 11-पोर्टल प्रबन्धक उत्तरा पोर्टल जी०ओ०यू० परियोजना कार्यालय आई०आई०टी० रूडकी।
- 12-संख्या-अनुभाग को इस निर्देश के साथ कि उक्त परिपत्र स्कैन कर व्यापार प्रतिनिधियों /अधिवक्ताओं को ई-मेल द्वारा प्रेषित कर दे।
- 13-इन्टैवैट ईन्फो प्रा० लि० 4, फेयरी मेनर द्वितीय फ्लोर 13, आर० सिधुआ मार्ग मुम्बई-400001।
- 14-नेशनल लॉ हाउस बी-2 मॉर्डन प्लाजा बिल्डिंग अम्बेडकर रोड गाजियाबाद।
- 15-नेशनल लॉ एण्ड मैनेजमेन्ट हाउस-15/5 राजनगर गाजियाबाद।
- 16-लॉ पब्लिकेशन व्यापार कर भवन, कलेक्ट्रेट कम्पाउण्ड राजनगर गाजियाबाद।
- 17-स्थापना-अनुभाग मुख्यालय।
- 18-डिप्टी कमिश्नर (उ०न्याय०कार्य) वाणिज्य कर नैनीताल।
- 19-दी होलसेल डीलर्स एसो० 14, आढ़त बाजार देहरादून।
- 20-कार्यालय अधीक्षक की केन्द्रीय गार्ड फाइल हेतु।
- 21-विधि-अनुभाग की गार्ड फाइल हेतु।

प्रभारी कमिश्नर वाणिज्य कर  
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a situation like the one obtaining in this case might be one of disadvantage, but he will have to suffer that as well once he has opted for compounding.

This was not a case where the assessee paid the compounding fee and tried to get a refund in terms of rules 43 and 44 of the Entertainments Tax Rules. The assessee purported to deduct the amounts on his own from the compounding fee payable under section 3B of the Act. This was not an act which was authorised by anything contained in the Act or the Rules and this was in violation of the obligation of the licensee to pay the compounding fee in terms of the Act. Therefore, it could not be said that the authorities concerned were not justified in imposing a penalty on the licensee and also in calling upon him to pay the amount which he had deducted. Section 16 of the Act does confer a power on the authority concerned to impose a penalty. Thus, the order imposing penalty cannot also be said to be illegal or one without jurisdiction.

In this situation, we are satisfied that the petitioners are not entitled to any relief. We, therefore, reject the contentions of the petitioners and dismiss the writ petition.

[2009] 20 VST 747 (All)

[IN THE ALLAHABAD HIGH COURT]

**COMMISSIONER, TRADE TAX, U. P., LUCKNOW**

v.

**SRI RAM**

RAJES KUMAR J.

September 13, 2007.

HF ▶ Department

SALES TAX—DEEMED SALE—TRANSFER OF RIGHT TO USE GOODS—OWNER OF BUS PROVIDING BUS TO TRANSPORT CORPORATION—POSSESSION AND CONTROL THROUGHOUT PERIOD OF CONTRACT REMAINING WITH CORPORATION—HIRE CHARGES TAXABLE—U. P. TRADE TAX ACT (15 of 1948), s. 3F.

*Where the respondent, the owner of a bus, provided it to the UPSRTC under an agreement and the assessing authority levied tax on the amount received towards hire charges from the UPSRTC under section 3F of the U. P. Trade Tax Act, 1948 but the Tribunal deleted the tax, on a revision petition :*

Held, allowing the petition, that under the agreement, possession and control of the vehicle remained with the UPSRTC, during the period of contract, which showed that the possession was transferred by the respondent to the UPSRTC for use. The case squarely fell within the purview of provision of section 3F of the Act and the Tribunal was wrong in deleting the tax. (see para 8)

*BHARAT SANCHAR NIGAM LTD. v. UNION OF INDIA* [2006] 145 STC 91 (SC) ; [2006] 3 VST 95 (SC) applied.

*Bharat Sanchar Nigam Ltd. v. Union of India* [2006] 145 STC 91 (SC) ; [2006] 3 VST 95 (SC) (paras 4, 8) referred to.

Trade Tax Revision No. 2298 of 2004.

*B. K. Pandey*, Standing Counsel for the petitioner.

*Ram Bilas Yadav* for the respondent.

#### JUDGMENT

- 1 RAJES KUMAR J.—Present revision under section 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 under section 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 under section 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 under section 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.*

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*Union of India* reported in [2006] 145 STC 91 ; [2006] 3 VST 95 ; [2006] 29 NTN 307.

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

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."

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

"द्वितीय पक्ष द्वारा उपलब्ध करायी गयी मिनी बस संख्या-यू०पी०-५३/३६३५ माडल १९९७ रजिस्ट्रेशन तिथि ०७-०८-१९९७ व्यापक बीमा पालिसी संख्या-७९६५०७ वैधता ०२-०८-९८ समय पर उपलब्ध कराई जायेगी, अनुबन्ध अवधि में प्रथम पक्ष के हवाले रहेंगी तथा बस का स्वाधिकार और नियंत्रण प्रथम पक्ष के अधीन रहेगा, किन्तु बस का स्वामित्व द्वितीय पक्ष का ही रहेगा।"

(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. v. Union of India* [2006] 145 STC 91 (SC) ; [2006] 3 VST 95 (SC), 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.

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.

