

**(2006) 08 AHC CK 0206**

**Allahabad High Court**

**Case No:** None

Shiva Traders

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

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**Date of Decision:** Aug. 18, 2006

**Acts Referred:**

- Uttar Pradesh Trade Tax Act, 1948 - Section 11

**Citation:** (2009) 21 VST 209

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

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **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 November 6, 1999 relating to the assessment year 1993-94.

2. The assessing authority had received the information that the applicant had supplied stone ballast to the Railway Department and received the payment of Rs. 8,45,429.45. During the course of assessment proceedings, the applicant had accepted the receipt of the payment but submitted that a sum of Rs. 2,57,337.82 was received towards the cost of the ballast and the rest of the amount was received towards the freight charges and labour charges. In support of his claim, copy of the contract and bills was not produced before the assessing authority. The assessing authority by way of best judgment assessment estimated the taxable turnover at Rs. 9 lacs. Applicant filed first appeal before the Deputy Commissioner (Appeals). Before the Deputy Commissioner (Appeals) the photocopy of the contract for the year 1989-90 was produced and it was submitted that the contract for the year under consideration was also the same. It was submitted that in the contract for the assessment year 1989-90 there was a separate stipulation for the cost of the ballast

and the freight charges. First appellate authority has allowed the appeal in part and has accepted the claim of the applicant so far as the freight is concerned and levied the tax only on the turnover of the value of stone ballast for Rs. 2,57,337.82. The Commissioner of Trade Tax filed appeal before the Tribunal. The Tribunal by the impugned order allowed the appeal in part. The Tribunal confirmed the levy of tax on the amount of Rs. 8,45,429.45, the total amount received by the applicant during the year under consideration and has rejected the claim of the applicant that the freight would not be liable to tax.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that only the value of the stone ballast was liable to tax and the freight would not be liable to tax. He submitted that in the contract, there was separate stipulation for the value of the stone ballast and the freight charges. Thus, freight and other expenses would not be liable to tax.

5. I do not find any substance in the argument of learned Counsel for the applicant. Admittedly, the applicant could not produce the copy of the contract for the year under consideration nor the copy of the bills were produced to show that the freight was separately stipulated and had been separately charged in the bills from the customers.

6. Section 2(i) of the Act defines the "turnover" as follows:

"Turnover" means the aggregate amount for which goods are supplied or distributed by way of sale or are sold by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration:

Explanation I-Omitted.

Explanation II-Subject to such conditions and restrictions, if any, as may be prescribed in this behalf,-

(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 realised as [trade tax on sale or purchase of goods], when such cost or amount is separately charged ;

(ii) to (iv) ....

7. Explanation II of Section 2(i) of the Act provides that the cost of the freight could not be a part of turnover in case it is separately charged. Thus, it is on the dealer to prove that the freight was separately charged from the customers.

8. In the present case, the applicant failed to prove that freight was separately charged. Therefore, I do not find any error in the order of the Tribunal.

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