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**(2007) 09 AHC CK 0023**  
**In the Allahabad High Court**

Krishna Brickfield

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

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**Date of Decision :** 19-09-2007

**Acts Referred:**

Uttar Pradesh Trade Tax Act, 1948 — Section 11

**Citation :** (2009) 20 VST 889

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

**Bench :** Single Bench

**Final Decision :** Allowed

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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 February 1, 2003.

2. The applicant owned brick-kiln and was engaged in the business of manufacture and sales of bricks. The applicant was subjected to assessment for the sales of bricks u/s 7 of the Act. The assessing authority initiated the proceeding u/s 21 of the Act on the basis of the information received from the Director of Movement (Coal), U.P., Lucknow that the applicant was allotted three boxes and four boxes of coal in the month of January, February, and March, 1993. The applicant appeared before the assessing authority and submitted that against the said allotment, coals were not purchased and brought inside the State of U.P. The assessing authority however had not accepted the plea of the applicant and had presumed that the coals against the said allotment had been purchased and imported inside the State of U.P. and subsequently sold. Accordingly, the turnover of coals at Rs. 8,25,000 was estimated.

3. Being aggrieved by the order of the assessing authority, the applicant filed appeal before the Deputy Commissioner (Appeal), Trade Tax, Meerut. Before the Deputy Commissioner (Appeal), the applicant filed a certificate of District Supply Officer, Meerut certifying that against the said allotment, there is no information

about the import of coal in the district. Relying upon the said certificate, the Deputy Commissioner (Appeal) set aside the order passed u/s 21 of the Act and allowed the appeal. Being aggrieved by the order of the Deputy Commissioner (Appeal), the Commissioner, Trade Tax filed appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal, set aside the order of the first appellate authority and restored the order of the assessing authority. The Tribunal held that the dealer had not filed any certificate or proved that from the colliery the coal allotted to the applicant was not lifted. The Tribunal relied upon the decision of this Court in the *Tirugi Narayan Pandey v. Commissioner of Sales Tax* reported in [2001] 123 STC 344 : [2001] UPTC 72 in which it has been held that burden u/s 12A of the Act lies upon the dealer to prove that the allotted coal had not been imported.

4. Heard Sri K. Saksena, learned Counsel for the applicant and Sri K.M. Sahai, learned Standing Counsel.

5. The learned Counsel for the applicant submitted that present is the case u/s 21 of the Act. The proceeding u/s 21 of the Act was initiated merely on the basis of the allotment and there is no evidence of import of coal. He submitted that when the dealer denied to have imported any coal against the said allotment, the Revenue should prove the actual purchases and import of coal. He submitted that so far as the dealer is concerned, a certificate of the District Supply Officer was filed certifying that against the allotment orders coal had not been purchased and imported. He submitted that the decision in the case of *Tirugi Narayan Pandey v. Commissioner of Sales Tax* reported in [2001] 123 STC 344 : [2001] UPTC 72 is not applicable to the present case as the said case was u/s 7 of the Act and in the said case the dealer had furnished the certificate for some quantity of the coal while the certificate of some of the quantity was not furnished and therefore, it was held that the presumption of the assessing authority that the said coal had been purchased was held justified. But in the present case, the proceeding had been initiated u/s 21 of the Act and import of entire quantity of the coal was denied. In support of the contention, he relied upon the decision in the case of *Vishnu Dutt Sharma v. Commissioner of Sales Tax* reported in [1990] UPTC 689 in which this Court held that mere information received from the District Supply Officer for the allotment of the coal does not lead to a conclusion that the coal was actually purchased in pursuance of the allotment order. It was further held that u/s 21 of the Act burden lies upon the Revenue to prove that the coal had been imported.

6. The learned Standing Counsel submitted that the certificate of the District Supply Officer was filed before the first appellate authority for the first time and the assessing authority could not get opportunity of rebuttal as required u/s 12B of the Act.

7. Heard learned Counsel for the parties. I have perused the order of the Tribunal and the authorities below.

8. In the present case, the certificate of the District Supply Officer was filed for the first time before the first appellate authority. The first appellate authority relying upon the said certificate has held that the coal against the allotment had not been purchased and imported by the applicant. u/s 12B of the Act after admitting additional evidence the opportunity of rebuttal should be given but in the present case, no opportunity had been given. It is well-settled principle of law that u/s 21 of the Act the burden lies upon the Revenue to prove that there was escaped turnover. The mere information about the allotment is not sufficient to conclude that the coal against the said allotment had been purchased and imported. The assessing authority in order to prove that the coal had been actually purchased and imported against the allotment should make some further enquiry but it appears that no further inquiry was made in this regard.

9. In the facts and circumstances of the case, I am of the view that the matter requires a fresh consideration by the assessing officer. The assessing officer may consider the certificate of the District Supply Officer and may also make inquiry as he may desire and pass appropriate order having regard to the decision of this Court in the case of Vishnu Dutt Sharma v. Commissioner of Sales Tax reported in [1990] UPTC 689 and also in the case of Tirugi Narayan Pandey v. Commissioner of Sales Tax reported in [2001] 123 STC 344 : [2001] UPTC 72.

10. Revision is allowed. The order of the Tribunal is set aside and the matter is remanded back to the assessing officer to pass the assessment order afresh in the light of the observation made above.