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MELTON INDIA

v.

THE COMMISSIONER TRADE TAX, U.P.

JANUARY 31, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

U.P. Trade Tax Act:

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Turnover—Enhancement of, on the ground of suppression—Increased power consumption by assessee's unit—Books of account of assessee showing lesser production—Rejection of books of account by courts below—Correctness of—Held, correct—Excessive power consumption prima facie establishes assessee's intention to suppress the production and turnover.

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The question which arose for consideration in the present appeal is whether the Authorities, Tribunal and High Court were right in rejecting the books of account of assessee and enhancing the turnover, on the premise that the assessee had suppressed its production when there is increase in electricity consumption.

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Dismissing the appeal, the Court

HELD: 1. The High Court is right in saying that excessive power consumption, *prima facie*, establishes the assessee's intention to suppress the production and the turnover. [Para 12] [44-B]

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2.1. The assessee's contention that earlier the appellant was manufacturing goods of 23 micron which required less electricity consumption, whereas subsequently it had started manufacturing goods of 12 micron which required more electricity consumption, cannot be accepted. It may be noted from the orders of the Tribunal and the High Court that the assessee's books of accounts have been rejected on several grounds. For example, the assessee had not produced the relevant books showing the payment of wages to the workers. This book was very important because had it shown that the total wage bill of the unit was going up, it would be a reasonable inference to draw that production was also going up. Non-production of such a book despite several opportunities being given by the

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authorities indicates that the assessee was trying to suppress its production. A
Similarly, non-production of the production register also leads to the same
inference. [Para 14] [44-D-E]

2.2. There were relevant considerations and relevant material on the
basis of which the books of the assessee were rejected by Tribunal. The B
Tribunal has given various reasons for upholding the rejection of the assessee
books. For example, there was no verification of the raw materials used and
the work done on job work basis has not been verified. The Tribunal also
considered the assessee's submission regarding the difference in the
production of 23 microns and 12 microns. The Tribunal has also observed C
that the appellant has nowhere mentioned that the chilling plant has ever
remained closed and similar is the position with regard to the supply of
electricity for labourers. [Para 15] [44-F-G]

3. The High Court has considered these reasons and has not interfered
with the findings of the Tribunal about non maintenance of proper accounts D
and suppression of production and turnover. These are findings of fact and
hence the High Court, which could only interfere if there was an error of
law, rightly rejected the revision. [Para 16] [45-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 373 of 2007.

From the Judgment and Final Order dated 10.12.2004 of the High Court E
of Judicature at Allahabad in T.T.R. Nos. 2407,2408,2409 and 2410/2004.

Dinesh Dwivedi, Kavin Gulati and T. Mahipal for the Appellant.

Gaurav Banerjee, Vikrant Yadav and Kamendra Mishra for the F
Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

2. This appeal has been directed against the judgment and order dated G
10.12.2004 by the High Court of Judicature at Allahabad in Trade Tax Revision
Nos. 2407-2410/2004.

3. Heard learned counsel for the parties and perused the record.

A 4. The appellant was doing the business of manufacture of metallised plastic films. The appellant's unit was holding an eligibility certificate under Section 4-A of the U.P. Trade Tax Act for the period from 20.02.1995 to 19.02.2003 upto monetary limit of Rs. 66,56,239/-. The Assessing authority rejected the appellant's books of account and enhanced the turn over. The first and second appeals filed by the appellant were rejected.

B 5. The appellant then filed Revisions before the High Court which were also dismissed and hence this appeal.

C The Tribunal has rejected the books of account of the assessee appellant on the ground that during the assessment year 2000-01 as against the electricity consumption of 513596 units, production was shown at 402 MT, while in the assessment year 2001-02 as against the electricity consumption of 638164 units, production was shown at 268 MT, and for the assessment year 2002-03 as against the electricity consumption of 668736 units, production was shown at 314 MT. Thus the Tribunal, as also the High Court, were of the view that since electricity consumption by the assessee had increased it can be reasonably inferred that the assessee's production must also have increased. Since the production had in fact gone down, it could be reasonably inferred that the assessee had suppressed its production.

E 6. The appellant explained that during the period in question it had switched over from production of 23 micron goods to production of 12 micron goods. According to it, electricity consumption in the manufacturing of 23 micron goods was less than that in manufacturing 12 micron goods. It was explained that the appellant was now manufacturing goods of 12 micron, which requires more electricity consumption as compared to the goods of 23 micron as the length of 12 micron is more than the length of 23 micron. The weight of 23 micron is 33 gm. per sq. meter, whereas the weight of 12 micron is almost half i.e. 17 gram per sq. meter, and therefore to manufacture 1 kg. goods of 12 micron the consumption of electricity is almost double than the consumption of electricity for manufacture of 1 kg. of 23 micron. It was further explained that the chilling tower was in operation even during the closure of the manufacturing which resulted continuous consumption of power, through manufacturing did not take place and electricity was also consumed in residential area. These explanations have not been accepted by the Tribunal on the ground that it can not be believed that during the closure of the production the chilling plant kept in operation. The Tribunal further held that though less production was shown but the claim of labour expenses

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etc. have not been shown less and the position was same as it was in the earlier years. The Tribunal observed that no prudent businessman would keep in operation the chilling plant without production. The Tribunal further held that separate account for the job work had not been produced and it had not been shown as to which production relates to the job work. The Tribunal accordingly sustained the rejection of the assessee's books of account and estimate of turn over on the basis of the higher consumption of electricity.

7. Shri Dinesh Dwivedi, learned senior counsel for the appellant submitted that the higher consumption of electricity is not a good ground for rejection of the books of accounts. On the other hand, learned counsel for the respondent submitted that the appellant had not maintained proper books of accounts.

8. In this connection we may refer to the electricity consumption and production in the appellant's factory for the three assessment years in question, which are as follows:

9. Assessment Year Production Electricity consumed

2001-01	402 MT	5,13,596
2001-02	268 MT	6,38,164
2002-03	314 MT	6,68,736

10. A perusal of the above figures shows that while the electricity consumption has clearly been going up, the production has gone down from 402 MT to 314 MT. Ordinarily, when electricity consumption goes up, a reasonable inference can be drawn that the production will also have gone up. If the electricity consumption is going up but the production is seen to be going down, a reasonable inference can, *prima facie*, be drawn that there was suppression of production and consequently suppression of sales in order to avoid sales tax.

11. The Deputy Commissioner (Appeals) observed that in spite of the several opportunities being given for verification of production from the production register, the labour attendance register and the payment made to the labour the same was not done by the assessee, and the closure of the manufacturing also could not be got verified from the labour attendance register and labour payment register. The appellant also had not maintained

A separate accounts for its own manufacturing and the job work, and it could not inform which raw materials have been used in the manufacturing of job work and which goods have been used on the assessee's own manufacturing.

12. In view of the above, we agree with the High Court that excessive power consumption, *prima facie*, establishes the assessee's intention to suppress the production and the turn over.

13. Shri Dinesh Dwivedi, learned senior counsel for the appellant, however, submitted that earlier the appellant was manufacturing goods of 23 micron which required less electricity consumption, whereas subsequently it had started manufacturing goods of 12 micron which required more electricity consumption as stated above.

14. In our opinion this submission cannot be accepted. It may be noted from the orders of the Deputy Commissioner (Appeals), the Tribunal and the High Court that the assessee's books of accounts have been rejected on several grounds. For example, the assessee had not produced the relevant books showing the payment of wages to the workers. This book was very important because had it shown that the total wage bill of the unit was going up, it would be a reasonable inference to draw that production was also going up. Non production of such a book despite several opportunities being given by the authorities indicates that the assessee was trying to suppress its production. Similarly, non production of the production register also leads to the same inference.

15. We have carefully perused the order of the Tribunal which is the last fact finding authority and we note that there were relevant considerations and relevant material on the basis of which the books of the assessee were rejected. The Tribunal has given various reasons for upholding the rejection of the assessee books. For example, there was no verification of the raw materials used and the work done on job work basis has not been verified. The Tribunal also considered the assessee's submission regarding the difference in the production of 23 microns and 12 microns. The Tribunal has also observed that the appellant has nowhere mentioned that the chilling plant has ever remained closed and similar is the position with regard to the supply of electricity for labourers. Various other reasons have given for rejecting the books of accounts including the imbalance in the production on the basis of electricity consumption, non verification of job work etc.

16. The High Court has considered these reasons and has not interfered with the findings of the Tribunal about non maintenance of proper accounts and suppression of production and turn over. These are findings of fact and hence the High Court, which could only interfere if there an error of law, rightly rejected the revision. Thus there is no force in this appeal and hence it is dismissed.

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Appeal dismissed.