

PETITIONER:
M\S SIRDANWAL INDUSTRIES

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX

DATE OF JUDGMENT: 07/08/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCALE (5)756

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The order under appeal is of the High Court at Allahabad in revision petitions filed by the Commissioner of Sales Tax under the U.P. Sales Tax Act. The question for consideration was whether brass wire manufactured by the assessee was classifiable as 'brassware' as claimed by the Revenue or under a notification dated 6.10.1971 issued under sub-section (2) of Section 3-A which mentioned "copper, tin, nickel or zinc, or any other alloy containing any of these metals".

The High Court rightly proceeded upon the basis that the brass wire manufactured by the assessee was an alloy of copper and zinc. It, however, rejected the argument that, as such, it was covered under the aforementioned entry in the notification. It emphasized the words 'any of these metals' in the entry and observed that if an alloy consisted of more than one of the metals mentioned in the entry, it would not be covered by it. An alloy, in its view, with copper or tin or nickel or zinc would be covered by the entry, but an alloy comprising more than one of these metals was beyond its scope. The High Court also relied upon the subsequent entry in the notification and observed that the use of the word 'all' in that entry and its omission in the relevant entry indicated that the intention was to confine the lower rate of tax only to those alloys which comprised only one of the metals named.

On a plain reading of the entry, we find it difficult to agree. Brass is an alloy. It contains copper and zinc. It, therefore, contains a metal mentioned in the entry. The entry applies to an alloy containing any of these metals. It applies, therefore, to brass. It is of no consequence that the alloy (brass) contains more than one of the metals mentioned in the entry.

The conclusion that we have reached is fortified by the judgment of this Court in M/s Saru Smelting (P) Ltd., vs. Commissioner of Sales Tax, Lucknow, 1993 Supp. (3) SCC 97,

where the entry was very similar, namely, 'copper, tin, nickel or any other alloy containing any of these metals only'. The Court said:-

"The emphasis in the entry is -- either it should be pure copper, tin, nickel or zinc and if it is an alloy containing two or more metals, it must be an alloy containing these metals only".

Since the alloy in question before the Court there contained phosphorous, which was not one of the metals mentioned in the entry, the alloy was held to fall outside the entry.

Brass wire, therefore, falls within the entry in the said notification.

The appeals are allowed. The judgment under appeal is set aside. The revision petitions filed before the High Court are dismissed.

There shall be an order as to costs.