PETITIONER:
SARU SMELTING (P) LTD.

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX, LUCKNOW

DATE OF JUDGMENT13/05/1993

BENCH:
YOGESHWAR DAYAL (J)
BENCH:
YOGESHWAR DAYAL (J)
KULDIP SINGH (J)

CITATION:
1993 SCR (3) 719 1993 SCC Supl. (3) 97
JT 1993 (3) 416 1993 SCALE (2)884

ACT:
U. P. Sales Tax Act, 1948-Section 3A (2) Second Proviso-Notification under-Whether phosphorous bronze exigible to a lower rate of tax-Held, 'only' specified metals or their alloys being exigible at the lower rate, it cannot fall within the entry if even very small quantity of it contains and unspecified metal, in this case phosphorous.

HEADNOTE:
By Notification No. ST-11-333/X-1012-1971 dated 15 November 1971, entry 2(a) copper, tin, nickel, zinc or any other alloy containing any of these metals only were made exigible at a reduced rate of sales tax of I
The Judge (Revisions) Sales Tax, U.P., Lucknow held that phosphorous bronze falls within this notification. The Single Judge of the Allahabad High Court took a contrary view and held that it was taxable as an unclassified commodity at 3.5%.
Before this court it was contended that phosphorous bronze is made of tin and copper only; that a small quantity of phosphorous is used to deoxidize the metal and that it is not an essential substance of the phosphorous bronze. It was, however, admitted that without the use of phosphorous, phosphorous bronze cannot he produced, and a certain quantity remains in the phosphorous bronze.
Dismissing the appeal, this Court,
HELD: (1) The emphasis in the entry is that it must contain, even if an alloy, "only" copper, tin, nickel or zinc.
The expression "only" is very material for understanding the meaning of the entry. Since the alloy in dispute contains phosphorous, may he in a very small quantity, it cannot fall within entry 2(a) of the notification. (721 -G)
Commissioner of Sales Tax v. Hindustan Metal Works (1964) 15 STC 97
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referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 266 (NT) of 1980.

From the Judgment and Order dt 14.12.1979 of the Allahabad High Court in Sales Tax Rev. No. 214 of 1979.

Harish N. Salve, P.P. Singh and Ms. Meenakshi Grover for the Appellant.

R.C. Verma and Ms S. Mukherjee for R.B. Misra for the Respondent.

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. This appeal is directed against the judgment of the Single Judge of the Allahabad High Court passed in Sales Tax Revision No. 214 of 1979 dated 14th December, 1979. By the impugned judgment the High Court set aside the order of the Judge (Revisions), Sales Tax, U.P. Lucknow holding that the Phosphorous Bronze which the assessee/appellant herein have been manufacturing, fell within the ambit of Notification No. ST-II-333/X- 10121971 dated the 15th November, 1971 issued in exercise of the powers under the second proviso to sub-section (2) of section 3-A of the U.P. Sales Tax Act, 1948 (U.P. Act No.XV of 1948), and took the view that the relevant entry at serial No. 2(a) of the said Notification did not cover the goods prepared by the appellant herein and was thus liable to be taxed as an unclassified commodity at the rate of 3.5%.The relevant entry reads as under:-

SI. No.	Description of goods	Rate of tax
1.....	....	.....
2....(a)	Copper, tin, nickel or zinc or any other alloy containing any of these metals only.	1 per cent.m
(b).........	....	......

The contention on behalf of the appellant is that Phosphorous Bronze manufactured and marketed by them is covered under the aforesaid entry. According to the appellant the said Phosphorous Bronze is made of tin and copper only. It is further contended on behalf of the appellant that the small quantity of Phosphorous is used to deoxidise the metal and as such the Phosphorous is not an

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essential substance of Phosphorous Bronze. It is, however, admitted case of the parties that without the use of Phosphorous the Phosphorous Bronze cannot be produced and certain quantity of Phosphorous still remains in the Phosphorous Bronze.

The contention of the respondent is that Phosphorous Bronze is an alloy containing not only the metals mentioned in the aforesaid entry but Phosphorous also and as such it is not covered under the aforesaid entry. The words "other alloy containing any of these metals only" mean that the alloy made of these metals i.e. copper, tin, nickel or zinc only and that alone is covered under the said entry. It was submitted that if any other metal or substance is included in such an alloy, the same would not be covered under the aforesaid entry.

A similar question arose in the case of Commissioner of Sales Tax, U. P. v. Hindustan Metal Works, Hathras reported in (1964) 15 Sales Tax Cases 97 wherein it was held as under:-

> "The Notification exempts tax on sale of alloys prepared from the solution of two or more of the metals enumerated therein. On account of the word "only" the sale of an alloy prepared from the solution of two or more of those metals and some other substance or substances would not be exempt from tax.

> The assesse sold an alloy called phosphorous bronze which was prepared from the solution of copper, tin, phosphorous and lead. Phosphorous and lead are not mentioned in the notification. They are deliberately added by the assessee as per agreement between the parties. The sale is, therefore, prime facie liable to be taxed."

We were referred to various dictionary meanings of the words Phosphorous Bronze 'which have been noticed by the learned Judge dealing with case in the High Court. We are really concerned with the interpretation of the entry. 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. The expression "only" is very material for understanding the meaning of the entry. Since the alloy in dispute contains Phosphorous, may be in a very small quantity, it cannot fall within entry 2(a) of the aforesaid Notification. The appeal consequently fails and is dismissed with costs.

U.R.

Appeal dismissed.

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