
(1980) 03 AHC CK 0044

In the Allahabad High Court

Case No : Sales Tax Revision No's. 345 of 1978 and 634 of 1979

Ram Charan Kasera

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 27-03-1980

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4
Uttar Pradesh Sales Tax Act, 1948 — Section 4
Uttar Pradesh Sales Tax Act, 1948 — Section 4

Citation : (1980) 46 STC 228

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : R.R. Agrawal, A.K. Gupta and R.V. Gupta, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Rastogi, J.—In these two revisions filed by M/s. Ram Charan Kasera, Aligarh, relating to the assessment years 1969-70 and 1971-72, there is a common question involved and it is as to whether zinc mazak is an alloy of zinc liable to be taxed as such or is it liable to be taxed as an unclassified item.

2. The assessee carried on business in zinc mazak and other metals. Admittedly, zinc mazak is a trade name given to an alloy consisting of 4 per cent aluminium, per cent magnesium, 0.3 per cent copper and 95 per cent zinc. It is used for the purposes of die-casting.

3. By Notification No. ST-3085/X-902 (16)-49 dated 3rd August, 1949, issued u/s 4 of the U. P. Sales Tax Act it was declared that with effect from 1st April, 1949, the provisions of Section 3 of the U. P. Sales Tax Act ""shall not apply to the sales of copper, tin, nickel and zinc or any alloy containing any of these metals only". This notification was amended by Notification No. ST-2631/X-902 (64)-50 dated 21st November, 1952, by which it was provided that the provisions of Section 3 of the Act shall not apply, and shall be deemed never to have applied,

with effect from 1st April, 1949, to the sales of-

(a) copper, tin, nickel or zinc or any alloy, containing any of these metals only.

4. Notification No. ST-1366/X-990-1956 dated .1st April, 1960, superseded with effect from 1st April, 1960, all the previous notifications so far as they related to the goods mentioned in column 2 of the schedule to this notification and with effect from the aforesaid date the turnover in respect of the said goods was made liable to be taxed at all points of sale at the rate indicated against each. The class of goods mentioned in the schedule was bullion and specie on sales of which tax was leviable at the rate of 25 naye paise per hundred rupees. Clause (a) of this schedule further provided for : copper, tin, nickel or zinc or any alloy containing any of these metals only and the rate of tax was provided as 50 naye paise per hundred rupees which was enhanced to 1 per cent from 15th November, 1971, by Notification No. ST-II-333/X-1012-1971 of that date.

5. The assessee for the years under consideration claimed that his outturn in respect of zinc mazak was liable to be taxed under this entry at the rate of 50 naye paise per hundred rupees. This contention did not find favour with the revenue authorities. The Additional Judge (Revisions) as well, following a decision of this Court in *Kalicharan Satish Chandra v. Uttar Pradesh State* 1975 U.P.T.C. 278 took the view that zinc mazak was not covered by the aforesaid entry because it was different from zinc and further was not an alloy containing any of these metals only.

6. It was submitted before me by Sri Raja Ram Agrawal, the learned senior counsel for the assessee, that this question is to be viewed from two aspects. Firstly, that zinc is not available in cent per cent purity and the assessee purchases zinc mazak and sells the same as such and the entry is to be interpreted in the sense in which it is understood in common parlance and, that being so, even after mixture of certain quantity of aluminium, magnesium and copper with zinc, the alloy would only be zinc. The second aspect is the scope of the expression "any alloy containing any of these metals only". According to the learned counsel, the word "any" means one or more than one and I was referred to the meaning given to this word in the *Random House Dictionary of the English Language* (1970 Edition). Two such meanings are : "(1) one, a, an, or some; one or more without specification or identification; (7) a single one or ones." Further in this dictionary the sense in which the word "alloy" is used is given as: a substance composed of two or more metals, or of a metal or metals with a nonmetal, intimately mixed as by fusion, electro deposition, etc. According to the learned counsel, therefore, if the intention was that alloy should be of all the metals mentioned therein, then the word "any" should not have been there before the words "of these metals". Rather the entry should have been : "Or any alloy containing these metals only". On the basis of the above contention it was urged that the decision in the case of *Kalicharan Satish Chandra* 1975 U.P.T.C. 278 needs reconsideration. These aspects could not be put before the Bench hearing this case which was decided ex parte.

7. After hearing the counsel for the parties, I am not inclined to agree with the above submissions. It is correct that the word "mazak" is a trade name given to zinc alloy as borrowed from the international market. The question, however, remains as to whether this zinc alloy or zinc mazak is covered by the aforesaid entry. As noted above, it speaks of : copper, tin, nickel or zinc or any alloy containing any of these metals only. In *Kalicharan Satish Chandra* 1975 U.P.T.C. 278, the view taken was that the product made by the petitioner of that case being alloy of zinc and aluminium did not fall within the aforesaid entry. Since it was an alloy of zinc and aluminium it was liable to be taxed as an unclassified item. My attention has been invited by the standing counsel to an earlier decision of this Court which has taken the same view though that decision has not been referred to in *Kalicharan Satish Chandra* 1975 U.P.T.C. 278. It was in the case of *Commissioner, Sales Tax v. Hindustan Metal Works, Hathras* [1964] 15 S.T.C. 97. In that case, the notification of 3rd August, 1949, which exempted from tax sales of copper, tin, nickel and zinc or any alloy containing any of these metals only, had come up for consideration and the article concerned was phosphor bronze ingots made from an alloy of tin and copper with a total addition of not more than 1 per cent of phosphorus and lead. The question referred was whether the sale of this article was liable to tax or was exempt under the aforesaid notification. A copy of this notification had been forwarded by the State Government to the Commissioner of Sales Tax with the remark that small impurities up to 1 percent is metals or alloys thereof should be ignored for the purpose of granting exemption. The Judge (Revisions) had held that the sale was exempt from tax under the notification because the lead and phosphorus in the ingots were impurities only. On reference there was a difference of opinion between the Judges constituting the Bench. The view taken by his Lordship Desai, C. J., was that lead and phosphorus added to copper and tin could not be said to be impurities within the meaning of the aforesaid direction issued by the Government. He was further of the opinion : "Any alloy containing something other than these four metals is not within the scope of the notification regardless of the percentage of the foreign thing." Asthana, J., as his Lordship then " was, took the view that the direction of the State Government was in the nature of an explanation to the main exemption clause of the notification and further the sale of phosphor bronze ingots would be exempted under the notification because in their physical properties phosphorus and lead would always be foreign to tin and copper and they would remain impurities whether they creep in the alloy of tin and copper unintentionally or mixed deliberately.

8. The case then came up before his Lordship Dwivedi, J. As for the interpretation of the true import of the notification Dwivedi, J., took the view that since the notification is addressed primarily and principally to the men of trade and industry, it is in the main to be observed and worked upon by them and, therefore, it would prima facie not be illegitimate to understand it in the sense which they would give to it. His Lordship then observed that "a metal is rarely absolutely pure. Even the so-called purest metal contains as an inseparable

concomitant some foreign substance in low percentage. The men of trade and industry therefore speak of metals as commercially pure. They overlook the inseparable foreign substances in a metal as low impurities and still call it a pure metal". In regard to the addition of phosphorus and lead it was held that since the substance was added deliberately to achieve specific purpose it could not be treated as impurity. Coming to the interpretation of the notification it was observed:

The notification exempts tax on the 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.

9. Thus, the view taken in *Hindustan Metal Works* [1964] 15 S.T.C. 97 was that only an alloy prepared from the solution of two or more of the metals mentioned in the entry could be covered by it and in case any other substance or substances are added to it, it would not be covered. This view was taken because of the use of the word "only". I am not inclined to agree with Sri Agrawal that the import of the word "any" was not considered therein and that the dispute there was about impurities only. As I have shown above, the import of the entry was under consideration and the view taken was that exemption was granted to four metals, viz., copper, tin, nickel or zinc or to an alloy containing any of these metals only. The intention of the legislature, therefore, was to allow exemption to those four metals or to an alloy of any of those metals. The word "any", as noted above, certainly means one or more. The dictionary meaning of the word "alloy" of course is a substance composed of two or more metals or of a metal or metals with a non-metal intimately mixed. That meaning cannot be attributed to the word "alloy" occurring in this entry because it clearly provides that the alloy should be a substance containing any of these metals only. In my opinion, therefore, this question has been considered fully by two Division Benches of this Court on earlier occasions and there does not appear to be any occasion for reconsideration of the view taken therein. On this view, zinc mazak which includes some foreign substances is not covered by the aforesaid notifications and has been rightly treated as an unclassified item.

10. The revisions hence fail and are dismissed. In the circumstances there will be no order as to costs.