CASE NO.:
Appeal (civil) 665-666 of 2000

PETITIONER:
M/s Jaiprakash Industries Ltd.

RESPONDENT:
Commissioner of Central Excise, Chandigarh

DATE OF JUDGMENT: 22/11/2002

BENCH:
M.B.SHAH, S.N.VARIAVA & D.M.DHARMADHIKARI.

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

These Appeals are against an Order dated 8th October, 1999 passed by the Customs , Excise and Gold (Control) Appellate Tribunal (hereinafter called the "Tribunal").

Briefly stated the facts are as follows:

The Appellants are engaged in construction activities. As part of their business they crush boulders into "bajari" which is then used in the construction work. The Appellants did not consider the activities of crushing boulders into bajari to be a manufacturing activity. They, therefore, did not apply for any licence nor paid excise duty.

On 26th February, 1992 a Show Cause Notice was issued to them demanding duty of Rs. 17,565/- on the crushed bajari for the period October, 1991 to January, 1992. Another Show Cause Notice was issued to them on 3rd May, 1993 demanding duty of Rs. 12,05,187/- for the period 1st April, 1988 to 30th September, 1991.

The Appellants filed a reply to both the notices.

On 14th June, 1993, the Assistant Collector, Central Excise confirmed the demand and also imposed a penalty of Rs. 1,00,000/-.

On 19th November, 1993, the Collector (Appeals) confirmed the order of the Assistant Collector. The Appellants, therefore, filed an Appeal before the Tribunal. By the impugned Judgment the Appeal has been dismissed.

Two questions were raised before the Tribunal, viz. (a) whether the activity of crushing boulders into bajari amounts to manufacture and whether the "bajari" is a new product having a distinct name, character or use and (b) whether the Respondent could have invoked the extended period of limitation under Section 11-A for the demand under the Show Cause Notice dated 3rd May, 1993.

We will first take up the second question. The law on this point is well-settled. In the case of Padmini Products Vs. Collector of Central Excise reported in 1989 (43) E.L.T. 195 (S.C.), this Court has held that wherever there is the scope for believing that the goods are not excisable to duty and, therefore, no licence is required to be taken out, then the extended period of limitation for demand under Section 11A is inapplicable. This Court has held that mere failure or negligence on the part of the manufacturer in not taking out a licence and in not paying duty does not attract the extended period of limitation. This Court has held that there must be evidence to show that the manufacturer knew that the goods were liable to duty and that he was required to take out a licence. This Court has held that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful mis-statement, suppression of fact or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion

or willful mis-statement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation. Mr. Sridharan, Advocate, for the Appellant, has apart from this authority also relied upon number of other authorities wherein the Tribunal has taken an identical view. In our view, the law having been settled by this Court, it is not necessary to refer to the decisions of the Tribunal. As the decisions have been cited, we merely set out the citations viz.:

(a) 1997 (89) ELT 123 (Tri) - Hindustan Construction Co. Vs. CCE, Chandigarh.
(b) 1994(73) ELT 91 (Tri) - Jaypee Rewa Cement Vs. CCE, Raipur.
(c) 1997 (23) RLT 260 (Cegat) - Bhawanthadi Minerals Vs. CCE, Raipur.
(d) 1998 (27) RLT 474 (Tri) - New Vikram Cement Vs. CCE, Indore,
(e) 1998 (104) ELT 505 - Duriappa Lime Products Vs. CCE, Madras.

In this case, there was a divergent view of the various High Courts whether crushing of bigger stones or boulders into smaller pieces amounts to manufacture. In view of the divergent views, of the various High Courts, there was a bona fide doubt as to whether or not such an activity amounted to manufacture. This being the position, it cannot be said that merely because the Appellants did not take out a licence and did not pay the duty the provisions of Section 11A got attracted. There is no evidence or proof that the licence was not taken out and/or duty not paid on account of any fraud, collusion, willful mis-statement or suppression of fact. We, therefore, set aside the demand under the show cause notice dated 3rd May, 1993.

As regards the demand under the show cause notice dated 26th February, 1992, Mr. Sridharan states that the Appellant has already paid the amount. He states that he is not pressing this Appeal in respect of the demand under that show cause notice. Thus we see no reason to decide the other question, viz. whether crushing of stones amounts to manufacture and whether a new product has come into existence. We leave this question open.

The Appeals stand disposed of accordingly. There will be no order as to costs.