

SUPREME COURT OF INDIA

S.N. Sunderson (Minerals) Ltd.

Vs.

Supdt. (Preventive) Central Excise

(S Bharucha, N S Hegde and S V Patil JJ.)

16.04.2002

ORDER

1. The first point that is argued before us is in regard to whether the crushing of limestone by the appellants into limestone chips of desired sizes by screening amounts to manufacture. The appellants did not carry the matter before the excise authorities to the Tribunal, which would have been the appropriate place to decide whether the process employed by the appellants amounted to manufacture, but approached the High Court directly and the High Court came to the conclusion that the emergence of a new marketable product, namely, limestone chips of specific size amounted to manufacture.

2. It is contended before us that the High Court did not consider the judgments that related to the crushing of limestone lumps to obtain limestone chips. Judgments lay down law. The law is to be applied to facts. What the facts are has not been allowed to be placed in the proper perspective. It was for the appellants to have approached the High Court, set out their process of crushing before it and obtained its decision as to whether it amounted to manufacture or not. As it is, there is no reason to interfere with the order of the High Court on the aspect of manufacture.

3. The next argument is that the High Court quashed the penalty imposed by the Collector, Central Excise, upon the appellants taking the view that the appellants were under a bonafide belief that they were not liable to pay excise duty on limestone chips. It is submitted that the High Court should, therefore, have also struck down the demand of duty based on Section 11A. We have gone through the judgment of the High Court. We find that no such argument is recorded by the High Court or answered. If it was the contention of the appellants that the High Court had not answered an argument that had been advanced before it, they should have approached the High Court in review. As it is, we are of the view that only the arguments recorded by the High Court and answered require our consideration.

4. The appeal is dismissed with costs.