Hansa Metallics Ltd. Vs Union of India (UOI)

C.W.P. No. 14981 of 2000

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 12, 2001

Acts Referred:
Central Excise Rules, 1944 â€" Rule 124, 173, 174, 226, 33#Central Excises and Salt Act, 1944 â€" Section 2#Constitution of India, 1950 â€" Article 226#Customs Act, 1962 â€" Section 110

Citation: (2001) 133 ELT 543

Hon'ble Judges: Nirmal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: M.L. Sarin and Balbir Singh, for the Appellant; Rajesh Gumber, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.S. Singhvi, J.
Whether the process of corrugation of metallic sheets amounts to manufacture within the meaning of Section 2(f) of the

Central Excise Act, 1944 (for short, the Act) is the question which arises for determination in this petition filed by the petitioner for quashing the

letter dated 3-7-2000 issued by the Superintendent, Central Excise, Range-II, Derabassi, District Patiala (respondent no. 5) requiring it to obtain

licence under Rule 174 of the Central Excise Rules, 1944 (for short, the Rules). The petitioner has also prayed for directing the respondents to

clear the goods, i.e., galvanised corrugated sheets (for short, GC sheets) manufactured by it without insisting on payment of duty under the Act.

2. The petitioner is engaged in the processing of metallic sheets as its factory situated at village Samalheri. It purchases duty-paid sheets and zinc

from domestic market and undertakes the activity of galvanisation and corrvigation on the said sheets. In 1998, it applied for registration under the

Act. The competent authority issued registration certificate on 29-4-1998. On that very day, the petitioner''s representative submitted letter to

respondent No. 5 for withdrawal of the registration by contending that in view of the law laid down by the Supreme Court in Gujarat Steels Tubes

Ltd. v. State of Kerala 1981 (42) E.L.T. 513 and by the Gujarat High Court in Zaverchand Gaekwad Pvt. Ltd. Vs. Union of India, and circular

No. 19/94/94-C.E., dated 9-2-1994 issued by the Central Board of Excise and Customs, New Delhi (for short, the Board), galvanisation of steel

strips does not amount to manufacture within the meaning of Section 2(f) and, therefore, no duty is payable by it. No order appears to have been

passed by the concerned authority on that application, but after about 2 years, a team of the officers of Central Excise Department visited the

factory of the petitioner and detained 142.260 MT of galvanised corrugated sheets on the ground of violation of Rules 9(1), 33, 173, 174 and 226

of the Rules. The same were handed over to Shri Ram Murti Mukhriya, General Manager (Works) on supurdginama. The petitioner made

representations dated 2-6-2000 and 26-6-2000 for release of the goods by contending that galvanisation and corrugation does not amount to

manufacture within the meaning of Section 2(f) of the Act but, instead of releasing the goods, Inspector (Prevention), Central Excise, Chandigarh

seized the detained goods on 10-7-2000 u/s 110 of the Customs Act, 1962 and again handed over the same to the Director of the petitioner on

supurdginama.

3. In the meanwhile, respondent No. 5 issued letter Annexure P.5, dated 3-7-2000 vide which he called upon the petitioner to obtain registration

certificate under Rule 124 of the Rules. After obtaining the required registration certificate, the petitioner has invoked jurisdiction of this Court

under Article 226 of the Constitution of India for grant of a declaration that the processes of galvanisation and corrugation do not amount to

manufacture within the meaning of Section 2(f) of the Act and, therefore, no duty is payable on the goods manufactured by it. In support of this

plea, the petitioner has relied on the decisions of the Supreme Court in Gujarat Steel Tubes Ltd. v. State of Kerala (supra), Union of India (UOI)

Vs. Delhi Cloth and General Mills, , Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others, , M/s. Ranadey Micronutrients

etc. Vs. Collector of Central Excise, and Steel Authority of India v. Collector of Customs, Bombay 2000 (115) E.L.T. 42 and the Board''s

circular dated 9-2-1994.

4. The respondents have not controverted the petitioner''s assertion that galvanisation of metallic sheets does not amount to manufacture within the

meaning of Section 2(f) of the Act, but they have controverted its claim for exemption by contending that the process of corrugation does amount

to manufacture within the meaning of the said section. In the written statement filed on behalf of the respondents, it has been averred that the

process of corrugation of plain and galvanised sheets brings into existence a new product having different characteristics and marketability with a

different name and, therefore, it amounts to manufacture within the meaning of Section 2(f) of the Act. According to them, the corrugated

galvanised sheets (which are also known as G.C. sheets in the market) have a different commercial identity and use and the price thereof is higher

than the plain metallic sheets or galvanised metallic sheets. They have further averred that the galvanised plain sheets are commonly used in the

manufacture of desert coolers, boxes, trunks etc., whereas the galvanised corrugated sheets are used in roofing, shelter etc. and their classification

under the Central Excise Act, 1944 is also different. The respondents have also sought dismissal of the writ petition as premature by asserting that

final order has not been passed in pursuance of the show cause notice Annexure R. 1, dated 22-11-2000 issued by the Deputy Commissioner,

Central Excise, Chandigarh.

5. The petitioner has filed replication reiterating its plea that the process of corrugation does not amount to manufacture within the meaning of

Section 2(f) of the Act. It has also controverted the assertion of the-respondents about the price difference between the galvanised sheets and

corrugated galvanised sheets by stating that the price shown in invoice No. 152, dated 1-3-2000 (Rs. 20,200/- per MT) relates to defective

galvanised sheets which were sold at rate less than normal price of the galvanised sheets. According to it, the difference between the price of the

galvanised sheets and galvanised corrugated sheets is not more than Rs. 300/- and both type of sheets fall under the same tariff heading. As

regards the objection raised by the respondents to the maintainability of the writ petition, the petitioner has averred that show cause notice issued

during the pendency of the writ petition cannot be relied upon for non-suiting it.

6. Shri M.L. Sarin, Senior Advocate appearing for the petitioner argued that the process of galvanisation and/or corrugation of metallic sheets does

not involve manufacture of any new product and, therefore, the petitioner could not have been compelled to seek registration and in any case, it

cannot be asked to pay duty on the corrugated galvanised sheets. He referred to the Chamber''s 21st Century Dictionary to show that the process

of corrugation does not change the nature or character of the metallic sheets and submitted that even though the commercial use of corrugated

galvanised sheets may be slightly different than the plain sheets or galvanised plain sheets, the petitioner is not liable to pay duty on the corrugated

sheets. Shri Sarin relied on the decisions of the Supreme Court in Gujarat Steel Tubes Ltd. v. State of Kerala (supra), Swastik Paper Industries

Vs. Union of India (UOI) and Others, and Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., and the decisions of the Gujarat

and Jammu and Kashmir High Courts in State of Gujarat v. Shah Veljibhai Motichand, Lunaioada (1969) 23 S.T.C. 289 and Sales Tax

Commissioner v. Jammu Iron and Steel Syndicate (1980) 45 S.T.C. 99.

7. Shri Rajesh Cumber, learned Counsel for the respondents argued that the petitioner cannot escape its liability to pay excise duty because the

process of corrugation of metallic sheets amounts to ''manufacture'' within the meaning of Section 2(f). He submitted that the corrugation of metallic

sheets brings into existence a new product having different characteristics, marketability and use. Learned Counsel referred to the tests laid down

by the Supreme Court for determining whether the particular process is covered by the definition of manufacture and argued that the petitioner

cannot seek exemption from payment of duty in respect of corrugated galvanised metallic sheets manufactured by it. He further argued that the writ

petition should be dismissed as premature because no final order has been passed by the competent authority in pursuance of the show cause

notice dated 21-11-2000.

8. Before adverting to the main issue, we consider it appropriate to mention that the respondents have not challenged the petitioner''s assertion that

in view of the circular dated 9-2.1994 issued by the Board, galvanisation of metallic sheets does not amount to manufacture and, therefore,

galvanised metallic sheets cannot be subjected to excise duty. In our opinion, even if the respondents had controverted this plea of the petitioner,

we would have granted relief of it in accordance with the Board''s circular because it is a settled proposition of law that the circular issued by the

Board are binding on the departmental authorities - Ranadey Micronutrients v. Collector of Central Excise (supra) and Steel Authority of India

Ltd. v. Collector of Customs, Bombay (supra).

9. The stage is now set for consideration of the main question as to whether the process of corrugation of metallic sheets amounts to manufacture

within the meaning of Section 2(f) of the Act. The said section reads as under:

Section 2(f) - ""manufacture"" includes any process -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of the Schedule [to the Central Excise Tariff Act, 1985 (5 of 1986]

as amounting to manufacture, and the word ''manufacture'' shall be construed accordingly and shall include not only a person who employs hired

labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own

account.

10. Though, the above reproduced definition of the term ''manufacture'' appears to be quite simple, its application has given rise to several cases

and for the purpose of deciding the controversy raised in this petition, it will be useful to notice some of them.

11. In Union of India (UOI) Vs. Delhi Cloth and General Mills, , a Constitution Bench of the Supreme Court considered the question as to

whether the refined oil produced in the process of manufacturing vanaspati can be subjected to duty under Item 12 of Schedule I appended to the

Central Excises and Salt Act, 1944. Their Lordships quoted with approval the following observations made in an American judgment which was

referred to in Volume 26 of Permanent Edition of Words and Phrases:

Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and

manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name,

character or use.

12. Their Lordships of the Supreme Court then held that the word "manufacture" used as a verb is generally understood to mean as bring into

existence a new substance and does not mean merely to produce some change in substance, howsoever minor and inconsequential, the change

may be.

13. In Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others, , the Supreme Court considered the question as to whether rolling of a

billets into circle amounts to manufacture u/s 2(f). While answering the question in affirmative, their Lordship observed as under:

The word "manufacture" is defined in Section 2(f) of the Act as including any process incidental or ancillary to the completion of a manufactured

product. The rolling of a billet into a circle is certainly a process in the course of completion of the manufactured product, viz., circles. In the

present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word

used in item 26A(2). In the other two cases which came before this Court, the articles mentioned in the relevant items of the First Schedule were

never held to have come into existence, so that the completed product, which was liable to excise duty under the First Schedule, was never

produced by any process. In the case before us, circles in any form are envisaged as the completed product produced by manufacture which are

subjected to excise duty. The process of conversion of billets into circles was described by the Legislature itself as manufacture of circles.

14. Empire Industries Limited and Others Vs. Union of India and Others, , a three Judges Bench of the Supreme Court considered as to whether

the activities of dyeing, printing and finishing of cotton fabrics and man-made fabrics amount to manufacture within the meaning of Section 2(f) of

the Act. After considering the issue from different angles, their Lordships held that the process undertaken by the petitioner-company amounted to

manufacture within the meaning of the Act, as it stood prior to the amendment made in 1979. Some of the observations made in that decision are

extracted below :

Whatever may be the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the

operation constitutes such a process which will be part of "manufacture". The test to determine whether a particular activity amounts to

"manufacture" or not is: Does new and different goods emerge having distinctive name, use and character. The moment there is transformation into

a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of

one process of several processes and "manufacture" takes place and liability to duty is attracted. Etymologically the word "manufacture" properly

construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of

degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as

such from that point of view is a question depending upon the facts and circumstances of the case.

15. The afore-mentioned decision was approved by a Constitution Bench in Ujagar Prints v. Union of India, : (1989) 3 SCC 488. After

formulating several questions including the one as to whether the process of bleaching, dyeing, printing, sizing, shrink-proofing etc. carried on in

respect of cotton or man-made "grey-fabrics" amount to "manufacture" for purposes and within the meaning of Section 2(f) of the Central Excises

and Salt Act, 1944 prior to the amendment of the said Section 2(f) by Section 2 of the Amending Act 6 of 1980 and answered the same in the

following words:

The prevalent and generally accepted test to ascertain that there is "manufacture" is whether the change of the series of changes brought about by

the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is,

instead, recognised as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either

conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between "processing" and "manufacture", results in an

over simplification of both and tends to blur their interdependence in cases such as the present one.

16. In Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, a three Judges Bench of the Supreme

Court examined the same issue in the context of claim for exemption claimed by the respondent from payment of duty in respect of the raw

material used for manufacture of crude sodium sulphate. Their Lordships referred to the definitions of the words "manufacture" and "process" and

held as under :

Clause 2(f) gives an inclusive definition of the term "manufacture". According to the dictionary, the term "manufacture" means a process, which

results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new

article. In determining what constitutes "manufacture" no hard and fast rule can be applied and each case must be decided on its own facts having

regard to the context in which the term is used in the provision under consideration. Manufacture implies a change but every change is not

manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or

more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another.

There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity

experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation

would amount to processing of the commodity. But is only when the change or a series of changes take the commodity to the point where

commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can

be said to take place. Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the

production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the

various processes to which the raw material is subjected to, manufactured product emerges. Therefore, each step towards such production would

be a process in relation to the manufacture. Where any particular is so integrally connected with the ultimate production of goods that but for that

process manufacture or processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.

17. In Collector of Central Excise, Bombay v. S.D. Fine Chemicals Pvt. Ltd. (supra), the question that arose before the Supreme Court was

whether distillation and recrystalisation carried out by the respondent amounts to manufacture. The Assistant Collector accepted the plea of the

respondent that the process of purification and distillation undertaken by it does not amount to process of manufacture and as such, it was entitled

to get exemption from duty under Notification No. 77 of 1963 dated 1-3-1963. The Collector (Appeals) held that the process undertaken by the

respondent amounts to manufacture because a new commodity known to the market emerges as a result of such process. In the appeal filed by the

respondent before the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi, the Technical Member accepted the plea of the

respondent but the Judicial Member took a contrary view. The matter was then referred to the third Member who, without dealing with the issue

discussed by the two Members, upheld the contention of the respondent. The Supreme Court reversed the order of the majority . of the Tribunal

and remanded the case for fresh adjudication. Their Lordships referred to the decisions in Union of India v. Delhi Cloth and General Mills (supra),

Empire Industries Ltd. v. Union of India (supra), Ujagar Prints v. Union of India (supra) and proceeded to lay down the following proposition :

The decisions aforesaid make it clear that the definition of the expression "manufacture" u/s 2(f) of the Act is not confined to the natural meaning

of the expression "manufacture" but is an expansive definition. Certain processes, which may not have otherwise amounted to manufacture, are

also brought within the purview of and placed within the ambit of the said definition by the Parliament. Not only processes which are incidental and

ancillary to the completion of manufactured product but also those processes as are specified in relation to any goods in the Section or Chapter

notes of the Schedule to the Central Excise Tariff Act, 1985 are also brought within the ambit of the definition. As has been repeatedly observed

by the Court, though the principles enunciated are clear, it is their application that presents difficulties and it does not help to draw any sharp or

instrinsic distinction between "processing" and "manufacture", which would only result in an over-simplification of both and tends to blur their

interdependence in cases such as the present one (Ujagar Prints)"". It would also be not right as pointed out in Ujagar Prints to try to restrict the

sweep of the definition with reference to Entry 84 List I of the Seventh Schedule to the Constitution. Since the constitutionality of the said definition

has been repeatedly upheld with reference to both Entries 84 and 97 of List I (Empire Industries and Ujagar Prints), the definition must be

understood in terms it is couched. It should also be remembered that the question whether a particular process does or does not amount to

"manufacture" as defined u/s 2(f) is always a question of fact to be determined in the facts of a given case applying the principles enunciated by this

Court. One of the main tests evolved by this Court is whether on account of the processes employed or applied by the assessee, the commodity so

obtained is no longer regarded as the original commodity but is, instead, recognition as a distinct and new article that has emerged as a result of

processes (Ujagar Prints).

18. The question as to whether the printed cartons manufactured by the appellant could be treated as product of printing industry so as to entitle it

to claim exemption under the notification issued by the Government arose for consideration in Rollatainers Ltd. and Another Vs. Union of India

(UOI) and Others, . While rejecting the appellant"s plea, their Lordships of the Supreme Court held as under :

...The literature referred to by the appellant only shows that the printing industry has advanced to such an extent that one can print on almost

anything such as glass, metal or synthetic base. Earlier the printing activity was primarily confined to printing of books, literature, newspaper and

periodicals etc. The advanced printing industry covers a much wider field of activity that it did in the past. Can we, therefore, say that every

material on which printing work is done becomes a product of the Printing Industry? The answer has to be in the negative. An ordinary carton

without any printing on it is a completed product and undisputable the product of the Packaging Industry. The question for our consideration is,

does it cease to be the product of Packaging Industry as and when some printing is done on the said carton? We are of the view that to a common

man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton. The extreme contention that all

products, on which some printing is done, are the products of the Printing Industry cannot be accepted....

What is exempt under the Notification is the product of the ''Printing Industry''. The "product'' in this case is the carton. The Printing Industry by

itself cannot bring the carton into existence. Any amount of fancy printing on a card-board would not make it a carton. In the process of

manufacturing the printed cartons, the card-board has to be cut, printed, creased and given the shape of a carton by using paste or gum. Simply

because there are expensive prints on the carton such a printed carton would not become the product of the Printing Industry. It shall remain the

product of the Packaging Industry.

19. In Union of India v. J.G. Glass Industries Ltd. (supra), a two Judges Bench of the Supreme Court considered the question as to whether the

process of printing glass bottles can be treated as ''manufacture'' within the meaning of Section 2(f) of the Act. Their Lordships referred to various

judicial precedents on the subject and answered the question in the negative by making the following observations:

The question is, whether the product would serve any purpose but for the printing. If the product could serve a purpose even without printing and

there is no change in the commercial product after the printing is carried out, the process cannot be said to be one of ''manufacture''.

20. Some other observations made in that decision, which appear to support the plea of the petitioner, are also extracted below :

On an analysis of the aforesaid rulings, a two-fold test emerges for deciding whether the process is that of ''manufacture''. First, whether by the

said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly,

whether the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity

already in existence will be of no commercial use but for the said process. In the present case, the plain bottles are themselves commercial

commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity

does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purposes or are of no

commercial use.

21. The propositions which can be culled out from the aforementioned decisions are as under :

(i) the definition of the expression ''manufacture'' u/s 2(f) of the Act is not confined to its natural meaning but is an expansive definition and certain

processes, which may not have otherwise amounted to manufacture have also been brought within the ambit of the said definition;

(ii) no hard and fast rule can be applied in determining what constitutes ''manufacture'' within the meaning of Section 2(f) of the Act, and each case

will have to be decided on its own facts but, broadly speaking, the particular activity or process would amount to manufacture if new and different

goods emerge having distinctive name, use and character by applying such activity or process;

(iii) the moment there is a transformation into a new commodity commercially known as a distinct and separate commodity having its own

character, use and name, whether be it the result of one process or several processes, the manufacture takes place;

(iv) where the change or series of changes brought about by the application of process take the commodity to the point where commercially it can

no longer be regarded as the original commodity but is, instead, recognised as a new and distinct article that has emerged as a result of the

process;

(v) whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to

processing of the commodity but it is only when the change or a series of changes take the commodity to the point where commercially it can no

longer be regarded as the original commodity and is recognised as a new and distinct article that a manufacture can be said to take place.

22. In the light of the above propositions, we shall now consider whether the process of corrugation of metallic sheets undertaken by the petitioner

amounts to manufacture within the definition of the said term. The word "corrugation" has not been defined in the Act and the Rules. Therefore, it

will be useful to refer to the dictionary meanings and take help of other literatures on the subject. As per Chamber"s 21st Century Dictionary, the

word "corrugate" means to fold into parallel rides so as to make stronger and corrugation is an act of wrinkling. As per New Oxford Illustrated

Dictionary, Volume-I, "corrugate" means contract into wrinkles or folds, mark with, bend into, parallel folds or ridges and corrugated means

galvanised sheet iron bent into a series of parallel ridges and grooves, used for roofing etc. : - paper, type of ridged packing paper. In

Encyclopaedia Britannica, Volume 6, corrugated iron and the process of galvanising and corrugating etc. have been described in the following

words :

Corrugated iron. - Although many millions of galvanized corrugated sheets are now in use all over the world, this industry is less than 100 years

old. British makers were the pioneers. At first, the sheets were made from wrought or puddled iron (not steel), and corrugated in the black, then

galvanized by hand dipping in an open bath of molten zinc. The output naturally was small, and the cost high, but the quality was excellent, so much

so that galvanized corrugated iron sheets are known to be still in use although they were fixed in position 50 years ago.

After the steel making process became a commercial proposition about 1860, steel sheets were produced in the heavier gauges but it was not until

about 30 years later that they were made successfully in the lighter gauges. The output per shift was so much larger and the cost so much lower

than iron, that steel sheets very quickly ousted the old fashioned iron sheets. But, it must be admitted that the life of ordinary quality galvanized

corrugated steel sheets is only about 25% that of the original iron sheets. Iron sheets, of higher purity than ever, are being made not only in Great

Britain but on the Continent and in America, for those who see the wisdom of paying a higher price for an article of longer life, but 95% of the so

called "corrugated iron" is really steel. The corrugating process enables much lighter gauges of sheets to be used because it makes them very rigid

and portable.

Galvanizing and Corrugating. - The black sheets are first put through the pickling process. This is done in a stone or timber tank which is filled

either with sulphuric or hydrochloric acid to remove all scale, oxide or rust. This operation can be carried out either by hand pokers or by an

automatic pickling machine. After being cleansed in a water tank, the flat sheets are then fed into the galvanizing bath either by hand or by an

automatic feeder, one at a time. The galvanizing bath is made of steel plates from 1 in. to 1-1/2 in. thick and of a size to suit the width of sheets to

be treated. Inside the bath there is the galvanizing machine with rollers which revolve in the molten spelter or zinc which is heated to 850 F. The

sheets pass rapidly through the zinc and emerge at the other side of the bath through two exist rollers; these rollers, together with the speed of the

machine and temperature of the bath, regulate the quantity of zinc covering, viz. from 1-1/4 to 2-1/2 Oz. per square foot. A flux is used in the

process made from muriate of ammonia and this causes the zinc to flow freely and gives the sheet a smooth surface. When sheets are wanted with

a bright flowery spangle, it is necessary to add a small proportion of tin to mix with the zinc. The sheets automatically pass through a tank of hot

water to wash off any flux stains and then they pass on to a drying fire and finally they are examined by inspectors.

The sheets then pass to the corrugating department. The galvanized flat sheets are here corrugated to the size of corrugation required, either by

powerful presses when several sheets are corrugated at a time or in rotary corrugated rollers usually doing one sheet at a time. In either case the

process is rapid and a large tonnage is obtained. The corrugated sheets are then weighed up, bundled or packed for shipment; or they are put into

store in their various sizes and gauges.

Laying Corrugated sheets. - For roofs the sheets should have end laps of not less than 6 in. The usual side lap for ordinary purposes is half a

corrugation, that is to say, the last corrugation in each sheet overlaps. This is known as "single side lap". For special purposes such as stores,

warehouses and dwelling-houses, the last two corrugation in each sheet should be over-lapped, otherwise termed double side laps". Sheets for

sides of buildings can be laid with 3 or 4 in end-laps, and half corrugation or single side laps. Bolts, nails or screws should always be placed in the

top corrugation. Wood screws or nails should be placed 6 in. apart. Bolts for fixing sheets together should be about 15 in. apart along the side

corrugation. Hook bolts for iron framed buildings should be about 12 in apart. All screws and sheet bolts should have at least one iron or lead

washer under the head; one of each is recommended. Hook bolts should have curved washers, either round or diamond shaped. In laying sheets,

the workman should begin at the bottom row, and work towards the ridge of roof.

Galvanized sheets should be stored very carefully in a dry, well-ventilated place, and any sheets which have become damp or wet in transit should

be wiped thoroughly dry before storing. On no account should they be stored in bundles in a damp atmosphere. If sheets must be stored in the

open air or under poor conditions, they should be stacked in such a manner as to allow a good air space between them.

23. From these dictionary meanings and the description of the process of corrugation it becomes clear that corrugation of plain sheets and

galvanised sheets brings into existence a new product having an altogether different identity and use. In their written statement, the respondents

have also averred that the process of corrugation of metallic sheets leads to the creation of a product which has different commercial identity/name,

marketability and use and the cost of the new product is higher than the original one, i.e. metallic sheets/galvanised sheets. The petitioner has

controverted the assertion of the respondents about the price of G.C. sheets but no evidence has been placed on record to prove that the price of

galvanised metallic sheets/plain sheets is the same as that of G.C. sheets. Therefore, by applying proposition Nos. (ii), (iii), (iv) and (v) to the facts

of this case, we hold that the process of corrugation undertaken by the petitioner amounts to "manufacture" within the meaning of Section 2(f) of

the Act and the respondents have not committed any illegality by requiring it to obtain registration and pay the excise duty on G.C. Sheets.

24. Before concluding, we may refer to the decision of the Supreme Court in Swastik Paper Industries Vs. Union of India (UOI) and Others, . In

that case, the Supreme Court considered the question as to whether the corrugated paper board manufactured by the appellant was included in the

expression "paper board" which was excluded from exemption notification issued by the Government of India. Their Lordships referred to Tariff

Item No. 17 as well as the dictionary meanings etc. and held that corrugated paper board falls within the ambit of the term "paper board" and as

such, the production of the appellant was not exempted from duty. In our opinion, that decision is of no help to the petitioner because the same

proceeds on the premise that process of corrugation of paper boards does not bring into existence a new product having different commercial

identity and use. As against this, the process of corrugation of metallic sheets undertaken by the petitioner brings into existence a new product

having different commercial identity, marketability and use.

25. The decision of J.G. Glass Industries Ltd. (supra) is also distinguishable. In that case, the Supreme Court had considered the question as to

whether the printing glass bottles can be treated as ''manufacture'' for the purpose of the Act and held that the process of printing does not change

the commercial identity of product which continues to be sold as bottles. Therefore, second test culled out in that decision will have to be read in

the backdrop of the issue raised therein and confined to like cases. Any other reading of that decision may render it inconsistent with the decision

of Larger Bench in Empire Industries Ltd. (supra), M/s. Ujagar Prints (supra) and Rajasthan State Chemical Works (supra).

26. For the reasons mentioned above, the writ petition is dismissed.