


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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DIN – 20201264WT0000217614

निबन्धित पावली डाक द्वारा/By R.P.A.D

फा.सं./F.No.V.73/15-66/OA/2018

आदेश की तारीख/Date of Order:- 11.12.2020

जारी करने की तारीख/Date of Issue :- 11.12.2020

द्वारा पारित/Passed by:-

एम.एस. चौहान / M.S. Chauhan

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 27/ADC/2020-21/MS

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

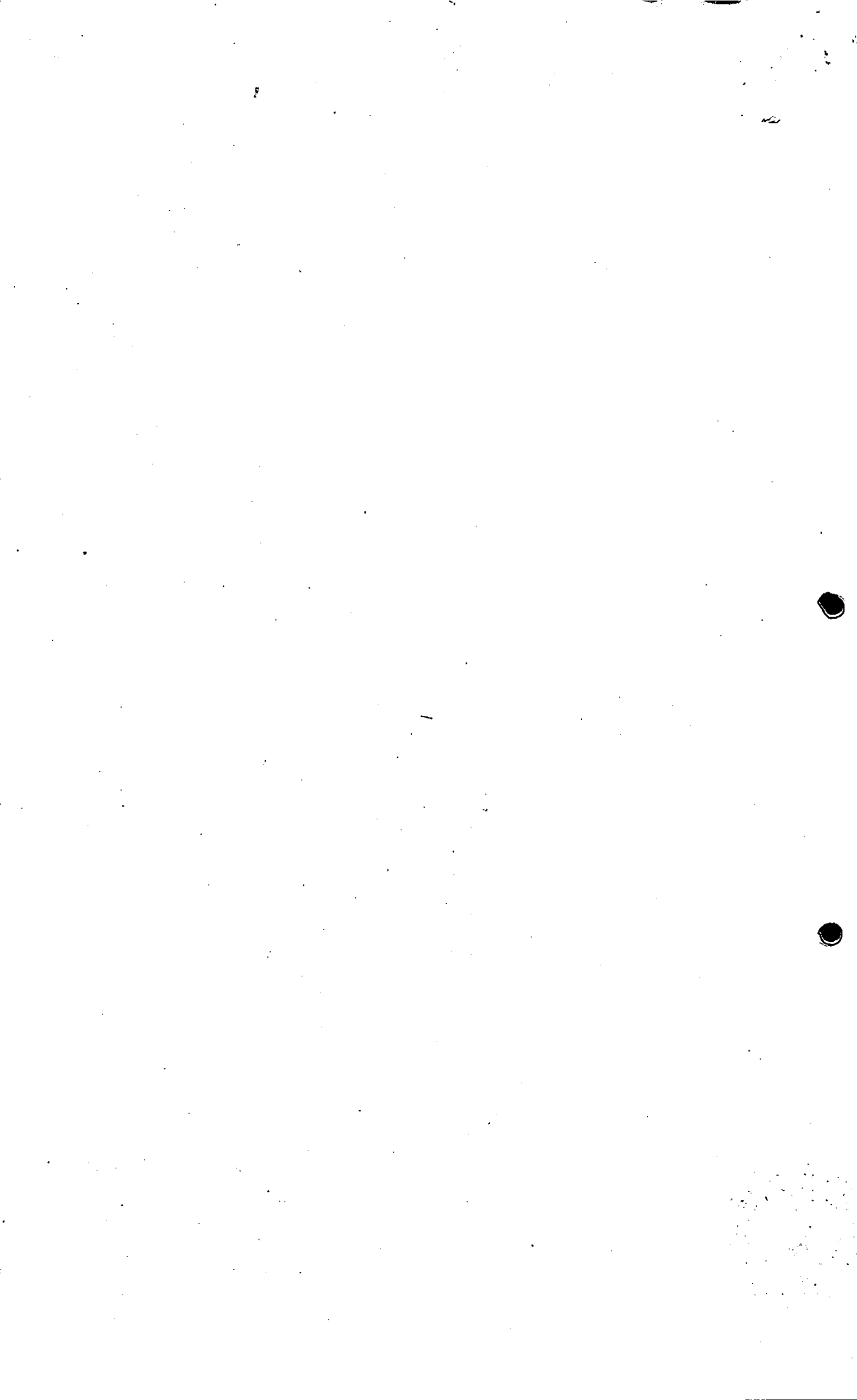
(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order

Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No.. V:73/15-66/OA/2018 dated 10.12.2018 issued to M/s Hindustan Roofers Company, Plot No. 1/8, Survry No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad.





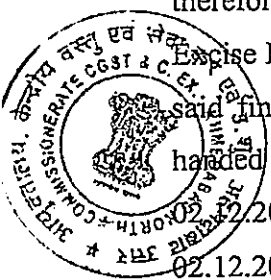
Brief Facts of the Case

M/s Hindustan Roofers Company, Plot No.1/8, Survey No.398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad (hereinafter referred to as the "noticee") was engaged in the manufacturing of M.S. Profile Sheets by process of corrugation, cutting & bending, falling under chapter 73 of Central Excise Tariff Act 1985 since July 2014 and was not registered with erstwhile Central Excise department.

2. On the basis of intelligence collected that the said unit was evading Central Excise duty by way of misusing the Job work Notification No.83/94-CE, as amended and Notification No.214/86-CE, as amended, the premises of said unit were searched by the Central Excise officers on 02.12.2015. During the panchnama proceedings it was found that the said unit was engaged in manufacturing of M.S. Profile Sheets from Galvanized sheets/coils by process of corrugation, cutting & bending. They had installed one profile machine & crimping/bending machine of SENSITIVE Company for the manufacturing process of M.S. Profile Sheets & crimping/bending of MS Coil/profile. They had purchased the machinery in the year 2014-15. The said unit was a partnership firm and Shri Yogesh Patel and Smt. Manishaben Patel were the partners of the said firm. They received the Materials i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil, Roofing Sheet Coil mainly from M/s. Roshan Steel Corporation, 68, Municipal Shop, O/s. Dariyapur gate, Main Road, Dariyapur, Ahmedabad, M/s. Jayhind Steel Syndicate, 811, Loha Bhavan, Navarangpura, Ahmedabad & others local customers. The said unit after manufacturing of finished product i.e. Corrugated MS Profile Sheets were returned to the respective parties. The suppliers/parties had not filed any declaration to Central Excise Department to avail the benefit of Central Excise Job work Notification No. 83/94- CE, as amended and Notification no. 214/86-CE, as amended.

3.1 During the investigation, it was revealed that the customers of the unit sent raw material i.e. Pre-painted MS Sheets directly to their factory for corrugation and profiling, according to their specification and after corrugation, the finished product i.e. these profiled/corrugated MS Sheets were sold by respective suppliers & the Job charges Bills showing only the Job Charges amount was raised by the noticee. It appeared that the noticee engaged in manufacturing activity by doing corrugation on MS Sheets received from its suppliers and during the above process neither the noticee nor any of its suppliers paid Central Excise Duty.

3.2 During the panchnama proceedings dated 02-12-2015, the fully finished goods, ready to dispatch condition were lying in the factory premises of the said unit which appeared to be well covered under the category of excisable goods and were attracting Central Excise Duty; as no Central Excise Duty was being discharged in respect of past clearances and the said unit had not obtained Central Excise registration; and there was possibility of intention to evade Central Excise Duty involved therein, therefore said goods valued at Rs.13,00,000/- were placed under seizure under the provisions of Central Excise Rules made under Central Excise Act, 1944 with a reasonable belief that the unit would clear the said finished goods without payment of Central Excise duty. The same seized finished goods were handed over to Shri Nayanbhai Patel, Authorised Signatory of the unit, under a suparatnama dated 02.12.2015. The Central Excise officers withdrawn relevant documents/records under panchnama dated 02.12.2015 for further investigation.



4. During the investigation, statement of Shri Nayan Kantibhai Patel, Authorized signatory of the noticee was recorded on 02-12-2015 under Section 14 of the Central Excise Act, 1944. In his statement Shri Nayan Kantibhai Patel, interalia admitted all the facts narrated in the panchnama dated 02.12.2015 and also stated that none of their suppliers had filed any declaration to Central Excise Department for availing the benefit of Notification No.83/94-CE, as amended and Notification No.214/86- CE, as amended.

5. During the investigation, statement of ShriYogesh Kantibhai Patel, Partner of the noticee was recorded on 02-12-2015 under Section 14 of the Central Excise Act, 1944. In his statement ShriYogesh Kantibhai Patel, interalia stated that they had started working from 08-09-2014 and that they received colour coated steel coils from M/s Roshan Steel Corporation, A'bad and M/s Jayhind Steel Syndicate, A'bad and after doing corrugation activity they cleared the same on job charges amount. He further stated that they were not aware that the corrugation activity amounts to manufacture and therefore didn't pay central excise duty on goods i.e. profile sheets cleared to M/s Roshan Steel Corporation, A'bad and M/s Jayhind Steel Syndicate, A'bad & they were under the impression that said activity comes under Service Tax purview and accordingly they had paid service tax after crossing the exemption limit. He further stated that they had never filed any declaration/informed the Central Excise Department regarding corrugation activity and also that none of their suppliers had filed any declaration to Central Excise Department for availing the benefit of Notification No.83/94-CE, as amended and Notification No.214/86- CE, as amended.

6. As followed-up search, office premises of one of main suppliers M/s Jayhind Steel Sydicate situated at 811, Loha Bhavan, Near Old High Court, Ahmedabad and godown situated at Plot No.528, Road No.15, Kathwada GIDC, Ahmedabad were also searched on 04-12-2015 under panchanama proceedings and relevant records were withdrawn for further investigation and statement of Sh. Jagjivan Tribhovan Das, Partner of M/s Jayhind Steel Syndicate was also recorded under Section 14 ibid wherein interalia he admitted that they were sending Galvanized Sheets & Coils for cutting, bending and corrugating to M/s HRC on delivery challans directly from their supplier and after necessary processing sent directly to their customers; that they had Central Excise Registration No.AAAFJ6844MXD001 since 19-02-2004 as a dealer but had not sought registration as a manufacturer & had also not sought permission for availing benefit of Notification No.83/94CE, as amended & Notification No.214/86-CE, as amended.

7. Office premises of one of main suppliers, M/s Roshan Steel Corporation, 68, Municipal shop, O/s Dariyapur Gate, Ahmedabad was also searched on 02.12.2015 under panchanama proceedings and relevant records were withdrawn for further investigation.

8. With a reasonable belief that quantum of central excise duty evasion could be more than the goods seized at the time of panchnama proceedings on 02-12-2015 at the premises of the noticee, further investigation in the matter was undertaken.

9. During the course of further investigation, Statement of Shri Jagjivan Tribhonvdas Patel, Partner and authorized signatory of Mis .Jayhind Steel Syndicate, 811, Loha Bhavan, Near Old High



Court, Ahmedabad was recorded on 17.10.2017 under sub-section 2(e) of CGST Act, 2017 read with Section 14, erstwhile Central Excise Act, 1944. In his statement dated 17.10.2017, Shri Jagjivan Tribhonvdas Patel, Partner and authorized signatory of M/s. Jayhind Syndicate, Ahmedabad interalia stated as under:

(i) that they are in business of trading of Iron & Steel material i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil, Roofing Sheet Coil, Profile Sheet etc.

(ii) that they had been sending raw material i.e. Pre-painted MS Sheets to M/s. Hindustan Roofers Company, Ahmedabad directly from purchaser for corrugated/Profiled MS Sheet and then these profiled/corrugated sheets were sent directly to their customers on delivery challan issued by them.

(iii) that they neither received finished product i.e. corrugated/profiled MS Sheets for storage to their godown nor done any further manufacturing process on such finished goods.

(iv) that they were submitting month-wise details from 08.09.2014 to 02.12.2015 of raw material sent directly from their purchaser to the premises of M/s Hindustan Roofers Company, Ahmedabad for profiling/corrugation and finished products sent directly to their customers from M/s. Hindustan Roofers Company.

(v) that M/s Hindustan Roofers Company, Ahmedabad is sole company they were sending their raw material for profiling/corrugation and paid Rs.1/- per kg for profiling/corrugation of pre painted MS Sheets; that they made all the payments in cheque only and no cash payment was made for this work.

(vi) that they had not paid any central excise duty on the finished products i.e. profiled/corrugated MS sheets nor collected any central excise duty from their customers; also that they never availed any CENVAT Credit on raw material purchased and also not taken central excise registration of manufacturer.

10. During the course of further investigation, Statement of Shri Kantibhai Vitthaldas Patel, Partner of M/s Roshan Steel Corporation, 68, Municipal Shop, O/s Dariyapur Gate, Ahmedabad was recorded on 28.11.2017 under sub-section 2(e) of CGST Act, 2017 read with Section 14, erstwhile Central Excise Act, 1944. In his statement dated 28.11.2017, Shri Kantibhai Vitthaldas Patel, Partner of M/s Roshan Steel Corporation, Ahmedabad wherein he interalia stated as under:-

(i) that they are in business of trading of Iron & Steel material i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil, Roofing Sheet Coil, Profile Sheet etc.

(ii) that they had been sending raw material i.e. Pre-painted MS Sheets to M/s. Hindustan Roofers Company, Ahmedabad directly from purchaser for corrugated/Profiled MS Sheet and then these profiled/corrugated sheets were received at their godown at 11, Gujarat Estate, Sanand Road, Sarkhej, Ahmedabad & then sold to their customers on sales invoice.

(iii) that they didn't carry any further manufacturing process on the finished product i.e. corrugated/profiled MS Sheets received from M/s Hindustan Roofers Company.



(iv) that they were submitting month-wise details from August-2014 to December-2015 of raw material sent directly from their purchaser to the premises of M/s Hindustan Roofers Company, Ahmedabad for profiling/corrugation and finished products sent directly to their customers from M/s Hindustan Roofers Company.

(v) that M/s Hindustan Roofers Company, Ahmedabad was sole company they were sending their raw material for profiling/corrugation and paid Rs.1-1.5/- per kg for profiling/corrugation of pre-painted MS Sheets; that they made all the payments in cheque only and no cash payment was made for this work.

(vi) that they had not paid any central excise duty on the finished products i.e. profiled/corrugated MS sheets nor collected any central excise duty from their customers; also that they never availed any CENVAT Credit on raw material purchased and also not taken central excise registration of manufacturer.

11. Whereas, on 04-01-2018 statement of Sh. Yogesh Kantilal Patel, Partner of M/s Hindustan Roofers Company, Ahmedabad was recorded under sub-section 2(e) of CGST Act, 2017 read with Section 14, erstwhile Central Excise Act, 1944 wherein he interalia stated as under:-

(i) that they are in the business of corrugation/profiling of Iron & Steel material i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil, Roofing Sheet Coil, Profile Sheet etc.; that they had taken registration with Central Excise Department on 04.12.2015 having Registration Number AAHFH5038CEM001.

(ii) that they used to mainly receive materials i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil mostly from M/s Jayhind Steel Syndicate, Ahmedabad & M/s Roshan Steel Corporation, Ahmedabad & other local customers for carrying out certain process in their factory premises.

(iii) that on receipt of such materials, they did cutting, bending and profiling as per the size & requirements of their suppliers and for which they used to do job-work for.

(iv) that they received such materials i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil on delivery challans & after cutting, bending and profiling on such materials, they returned the finished products to the suppliers; that they did not issue any delivery challans or Tax Invoice for returning of such finished products.

(v) that they produce the details of Job-Works done as profiling on materials i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil at our premises for the period for F.Y. 2014-15 and 2015-16 (upto November 2015) and put my dated signature in token of its correctness.

(vi) that they had neither levied any Central Excise duty on the finished products i.e. Profiled MS Sheet to their customers nor received any payment towards such Central Excise duty from their suppliers/customers.

(vii) that they received only Job Charges on such finished product & they levied only applicable Service Tax on Job Charges & no other tax/duty was levied/received or paid on such finished goods; also that they never availed any CENVAT Credit on such materials received from their customers.

(viii) that they usually charged Rs.1-2/Kg for Job work from their regular customers namely M/s. Jayhind Steel Syndicate, Ahmedabad & M/s Roshan Steel Corporation, Ahmedabad & others; that



sometimes, when local dealers comes for Job work for a small quantity for accessories on urgent requirement, they demand more job Charge which varies from Rs. 10000/- to Rs. 25000/- irrespective of their small quantity. Further, he submitted the details of Job-works done for local dealers for the Year 2014-15 & 2015-16 (Upto November 2015).

(xi) that the activity/process, they got carried out on received materials was called profiling.; that profiling is process of making zig-zag patterns with ridges & grooves in the vertical or horizontal manner; that the purpose of 'profiling' is to increases the strength of Galvanized Sheet, Galvanized Coil, PPGI Coil and therefore were used for roofing purpose.

(xiii) As per Pocket Oxford Dictionary, the meaning of corrugation and related terms is as under:-**Corrugate (-ting)** (esp. as corrugated adj.) form into alternate ridges and grooves, esp. to strengthen (*corrugated* iron). **Corrugation** (Latin *rugawrinkle*)

As per Cambridge dictionary, the word corrugated & related terms means as under:-

Corrugate

(especially of sheets of iron or cardboard) having parallel rows of folds that look like a series of waves when seen from the edge:

The roof is made from sheets of corrugated iron.

That on being shown the definition of corrugation and related terms as per Oxford and Cambridge dictionaries he agreed to same; that on being asked about the difference between corrugation & profiling he stated that putting a wavy pattern in the sheets is corrugation and putting angled ridges in the sheets is profiling, however he agreed to the fact that both increase the strength of sheets as compared to the plain sheet.

That on being asked about "Ridge" and "NLC", he stated that "Ridge" & "NLC", both are same things i.e. Corrugated Galvanized Sheet & further stated that "Ridge" is corrugated Galvanized Sheet but when it is bended in different Circular/semi Circular Shaped, they are called as "NLC"; that the words "Ridge" and "NLC" are words used in local market for our convenience and they are not different things.

12.1 The legal position with regard to whether corrugation is manufacturing or not had been well defined in the Judgment of High Court of Punjab & Haryana (published 2001 (133) E.L.T. 543 (P &H)] in the case of M/s. HANSA METALLICS LTD. Versus UNION OF INDIA (C.W.P. No.14981 of 2000, decided on 12-2-2001).

12.2 The Hon'ble High Court after carefully considering various judgments with regard to when a process can be considered manufacturing or not in terms of definition under Section 2(f) of Central Excise Act, 1944 went on to answer the question raised in subject case i.e. whether corrugation amounts to manufacture or not. The Hon'ble High Court held as under:-

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

- (i) the definition of the expression 'manufacture' under Section 2(1) 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 (I) 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;

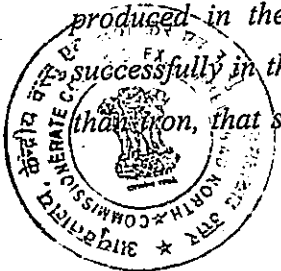
(iv) where the change or series of changes brought about by the application of process take the commodity to the point where commercially it can no longer be regarded as the original commodity but is, instead, recognised as a new and distinct article that has emerged as a result of the process;

(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 ridges 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



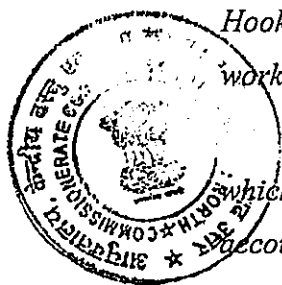
that the life of ordinary quality galvanized corrugated steel sheets is only about 25% that of the original iron sheets. Iron sheets, of higher purity than ever, are being made not only in Great Britain but on the Continent and in America, for those who see the wisdom of paying a higher price for an 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 pickers 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 exit 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.

12.3 In their statement dated 04-01-2018, Sh. Yogesh Kantilal Shah, Partner of M/s HRC though asserted that they are in the business of profiling of metallic sheets however after going through the dictionary definition accepted that profiling & corrugation are similar processes and serve same purpose i.e. to increase the strength of the sheets and in view of Hon'ble High Court's judgment cited above said unit was carrying out the activity that amounts to manufacture in terms of definition contained in Section 2 (f) of Central Excise Act, 1944 and therefore production of profile/corrugated MS Sheets was leviable to central excise duty.

13.1 The said unit had contended that they were doing job-work for their suppliers and had also obtained Service Tax registration and were also paying applicable service tax on the amount received as job work charges. The notification No.214/86-CE, as amended read with Notification No.83/94-CE, as amended provide exemption from payment of whole of central excise duty to job worker while processing the goods for principal manufacturer/supplier.

13.2 The Notification No.83/94-CE dated 11-04-1994, as amended reads as under:-

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods -

- (i) of the description specified in the Annexure to the notification of the Government of India in the Ministry of Finance (Department of Revenue); Nos. 8/2003-C.E., dated 1st march, 2003 and 9/2003-C.E., dated 1st March, 2003 or
- (ii) falling under heading 3904 relating to plastic material commonly known as polyvinyl chloride compounds (PVC Compounds) and goods falling under heading 8413 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986),
- (iii) falling under tariff item 3901 30 00 of the First Schedule to the Central



Excise Tariff Act, 1985 (5 of 1986), relating to material commonly known as Ethyl Vinyl Acetate copolymers (EVA Compounds).

- (iv) *(hereinafter referred to as the specified goods) manufactured in a factory as job work, from the whole of the duty of excise leviable thereon, which is specified in the said Schedule, subject to the condition that the supplier of the raw materials or semi-finished goods gives an undertaking to the proper officer having jurisdiction over the factory of the job worker*
- (a) *that the specified goods received from the job worker shall be used in the factory of such supplier in or in relation to the manufacture of specified goods which are exempted from the whole of the duty of excise leviable thereon under the aforesaid notifications, or goods falling under headings 6401 to 6405, cooking or heating apparatus of a kind used for domestic purposes, non-electric, and parts thereof, of copper falling under sub-heading 7418 19 or 7419 99, heading 8436, 8437, 8714 or 9608 or tariff item 7321 90 00, heading 8424 (except mechanical appliances which are not of a kind used in agriculture or horticulture), tariff items 8481 80 41, 8481 9010, drawing or mathematical instruments falling under sub-heading 901720 or tariff item 84864000 or kerosene pressure lanterns and parts thereof including gas mantles for use in kerosene pressure lanterns falling under heading 9405 of the said schedule, as the case may be; and*
- (b) *that in the event of his failure to do so, he undertakes to pay excise duty, if any, payable on such goods, but for the exemption contained in this notification, as if such goods were manufactured by the said supplier and sold on his own account:*

Provided that the waste or bye-product, if any, generated during the process of such job work shall also be exempt from the whole of the duty of excise leviable thereon under the said Schedule if-

- (i) *such waste or bye-product is used by the job worker for the manufacture of the said specified goods within his factory; or*
- (ii) *returned to the said supplier and are used in the factory of the said supplier in or in relation to the manufacture of the specified goods.*

Explanation.-For the purposes of this notification, the expression "job work" means processing of or working upon raw materials or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process, and the expression "job worker" shall be construed accordingly.



Notification No. 83/94-C.E., dated 11-4-1994 as amended by Notifications No. 18/97-C.E., dated 20-4-1997; No. 39/97-C.E., dated 30-6-1997; No. 7/98-C.E., dated 2-6-1998; No. 18/99-C.E., dated 1-4-1999, No. 36/99-C.E., dated 26-8-1999, Notification No. 31/2000CE., dated 31-3-2000, No. 17/2001-C.E., dated 31-3-2001 and No. 24/2002-C.E., dated 28-3-2002, No. 16/2003-C.E., dated 1-3-2003. No. 20/2006-C.E., dated 1-3-2006, No. 48/2006 CE., dated 30-12-2006 and No. 7/2009-C.E., dated 7-7-2009).

And Notification No.214/86-CE dated 25-03-1986, as amended reads as under:

Exemption to specified items if manufactured in a factory as a job work and used in the manufacture of final products

G.S.R. 547(E) In exercise of the powers conferred by sub-section (1) of section 54 of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (herein after referred to as Special Importance Act), the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts goods specified in column (1) of the Table hereto annexed (herein after referred to as the "said goods") manufactured in a factory as a job work and:

(a) used in relation to the manufacture of final products, specified in column (3) of the said Table,

(i) on which duty of excise is leviable in whole or in part: or

(ii) for removal to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software

Technology Parks or for supply to the United Nations or an international organisation for their official use or for supply to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 108/95-Central Excises, dated the 28th August, 1995, or

(iii) for removal under bond for export, or

(iv) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(b) cleared as such from the factory of the supplier of raw materials or semi-finished goods (i) on payment of duty for home consumption (on which duty of excise is leviable whether in whole or in part); or

(ii) without payment of duty under bond for export; or

(iia) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002;

(iii) without payment of duty to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, from whole of the duty of excise leviable thereon, which is specified in the Schedules to the Central Excise Tariff Act, 1985 (5 of 1986), the additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act.

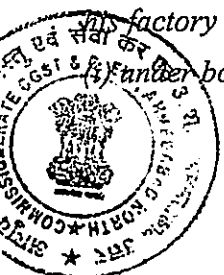
(2) The exemption contained in this notification shall be applicable only to the said goods in respect of which,

(i) the supplier of the raw materials or semi-finished goods gives an undertaking to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction over the factory of the job worker that the said goods shall be

(a) used in or in relation to the manufacture of the final products in his factory; or (b) removed from

his factory without payment of duty -

(i) under bond for export; or



(ii) for removal to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or for supply to the United Nations or an international organization for their official use or for supply to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 108/95-Central Excises, dated the 28th August, 1995, or

(iii) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(c) removed on payment of duty for home consumption from his factory; or

(d) used in the manufacture of goods of the description specified in column (1) of the Table hereto annexed by another job worker for further use in any of the manner provided in clause (a), (b) and (c) as above.

(ii) the said supplier produces evidence that the said goods have been used or removed in the manner prescribed above; and

(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the final products.

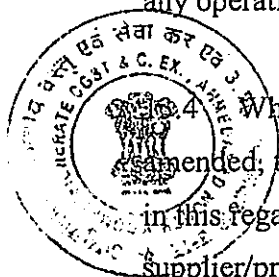
Explanation I.-For the purpose of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process

Table

Description of inputs	Description of final products
(1)	(2)
All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than polyester filament yarn falling under heading No. 54.02, light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol	All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than matches

13.3 As per Notifications cited above, for the purpose of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker/so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which was essential for the aforesaid process.

When it is clear that in order to get the exemption as a job worker under Noti. No.214/86-CE, as amended, the job worker must process a part/series or whole of manufacturing process and a declaration in this regard must be made in writing to the jurisdictional Assistant Commissioner of job worker by the supplier/principal manufacturer and in order to get value based exemption under Noti. No.83/94-CE, as amended, a declaration in this regard must be made in writing to the jurisdictional Assistant Commissioner of job worker by the supplier/principal manufacturer. In the event of failure to comply



with the conditions laid down under Noti. No.83/94-CE, as amended and Noti. No.214/86-CE, as amended, the exemption was not available and leviable central excise duty was required to be paid in full on the goods manufactured by such job worker.

13.5 In present case the whole manufacturing process involved profiling/corrugation and this whole manufacturing process was carried out at the factory premises of M/s HRC and no other process prior to or after the corrugation was carried out by the suppliers and suppliers didn't had any manufacturing facility. Also, the raw material was sent directly to the noticee by the suppliers and after the corrugation/profiling, in case of M/s Jayhind Steel Syndicate & local dealers the finished goods were sent to the customers and in case of M/s Roshan Steel Corporation, the material although was received back at their godown was sent to the customers but without any further processing.

13.6 It appeared that the complete manufacturing process was carried out by M/s HRC and no declaration was filed either by the suppliers or M/s HRC before the jurisdictional Assistant Commissioner, therefore central excise duty exemption on clearance of finished goods was not available to the noticee and central excise duty is required to be recovered in full at applicable rate on the value of the finished goods.

14.1 In his statement dated 17-10-2017 Sh. Jagjivan T. Patel, Partner of M/s Jayhind Steel Syndicate, A'bad submitted the details of raw material i.e. MS Sheets sent to M/s HRC for corrugation and also submitted the details of finished goods i.e. Corrugated/profiling MS Sheets falling under Chapter heading 7308 sold to their customers directly from the factory premises of M/s HRC for the period from 08.09.2014 to 02.12.2015.

14.2 In his statement dated 28-11-2017 Sh. Kantilal Vithaldas Patel, Partner M/s Roshan Steel Corporation, A'bad submitted the details of raw material i.e. MS Sheets sent to M/s HRC for corrugation and also submitted the details of finished goods i.e. Corrugated/profiling MS Sheets falling under Chapter heading 7308 sold to their customers for the period from 08.09.2014 to 02.12.2015.

14.3 In his statement dated 17-10-2017 Sh. Yogesh Kantilal Patel, Partner M/s HRC submitted the details of corrugation done for local dealers and also provided the approximate value of finished goods i.e. Corrugated/profiling MS Sheets falling under Chapter heading 7308 s for the period from 08.09.2014 to 02.12.2015.

14.4 It appeared that the goods were manufactured by M/s HRC in their factory premises though didn't issue the invoice for sale of these goods and goods were manufactured for the suppliers but without fulfilling the conditions laid down in Noti. No.214/86-CE, as amended & Noti. No.83/94-CE, as amended, therefore the value of goods for purpose of discharging central excise duty liability shall be the value of goods in terms of Rule 10A of Central Excise Valuation (Determination of Price of excisable goods) Rules, 200 which reads as under:-

Rule 10A.

Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then, -



- (i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;
- (ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;
- (iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall *mutatis mutandis* apply for determination of the value of the excisable goods:

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation.-For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

14.5 It appeared that in view of failure to furnish the declaration under Noti. No.214/86CE, as amended read with Noti. No.83/94-CE, as amended, M/s HRC had cleared the following goods without payment of applicable central excise duty and therefore the applicable central excise duty was required to be recovered in at the value of clearance in the invoices issued by the suppliers in terms of Rule 10A *ibid.*

- 15. From the facts discussed hereinabove, it appeared that the said unit had contravened the
- following provision:
 - I. Section 3 of the Central Excise Act, 1944, in as much as they failed to levy and collect duty;
 - II. Rule 4 of the Central Excise Rules, 2002, in as much as they have not correctly discharged Central Excise duty leviable on the goods prepared and captive consumed during the period from 08.09.2014 to 02.12.2015;
 - III. Rule 6 of the Central Excise Rules, 2002, in as much as they fail to assess the correct duty payable on the excisable goods;
 - IV. Rule 8 of the Central Excise Rules, 2002, in as much as they failed to make the payment of duty within due date;
 - V. Rule 9 of Central Excise Rules, 2002, in as much as the party has not obtained Registration from the department.



VI. Rule 10 of the Central Excise Rules, 2002, in as much as, they had not maintained the daily stock account of the finished goods in the Daily Stock Register (RG-1)

16. From the foregoing facts, it appeared that the said unit had taken the Central Excise Registration on 04.12.2015 only after the search proceedings by the Central Excise Officers and hence had contravened the provisions of Rule 9 of the Central Excise Rules, 2002, in as much as, they failed to register themselves with the Central Excise department and Rule 10 of the Central Excise Rules, 2002, in as much as, they had not maintained the daily stock account of the finished goods in the Daily Stock Register (RG-1). Therefore, the investigation conclusively established that the said unit had failed to account for the production of their fully finished excisable goods in their RG-1 and suppressed the production with an intention to clear the same without payment of Central Excise duty.

17. Thus the above acts of contravention on the part of the said unit appeared to have been committed by reasons of willful misstatement, suppression of facts and contravention of the provisions of the said Act and rules made there under with an intent to evade payment of Central Excise Duty.

18. From the above it appeared that M/s. Hindustan Roofers Company from 08.09.2014 to 02.12.2015 cleared the goods viz. profiled/corrugated MS Sheets valued at Rs.7,90,26,325/- without discharging Central Excise duty liability of Rs. 98,56,592/- (Rupees Ninety Eight Lakh Fifty Six Thousand Five Hundred Ninety Two Only) and therefore the duty involved in the manufacture and clearances of finished goods was required to be demanded and recovered from them under the Section 11A (4) of the Central Excise Act, 1944 along with interest at applicable rate was also required to be demanded and recovered from them under the section 1 IAA of the Central Excise Act, 1944.

19. Further it also appeared that the M/s HRC had manufactured the above referred excisable goods without obtaining a Central Excise Registration; without following proper Central Excise procedures; without issuing Central Excise Invoices; without filing relevant returns with the concerned Central Excise Authorities; and without payment of Central Excise duty leviable thereon. Thus, they had failed to determine / discharge / assess the Central Excise duty on the goods i.e. 'Profiled/corrugated MS Sheets', which were manufactured and removed by them and have thus contravened the provisions of Rules 4, 5 and 6 of Central Excise Rules, 2002. They had also failed to pay / debit the appropriate Central Excise duty in respect of the said goods removed from their factory, and had therefore contravened provisions of Rule 8 of Central Excise Rules, 2002. They had also contravened provisions of Rule 9 of Central Excise Rules 2002, by failing to obtain the Central Excise Registration. They had also contravened the provisions of Rule 10 of Central Excise Rules 2002 by not maintaining the Daily Stock Account. They had also failed to issue proper invoice in respect of the said goods cleared from their factory and as such they have contravened Rule 11 of Central Excise Rules, 2002. They had contravened Rule 12 of Central Excise Rules, 2002, as they failed to file Central Excise returns with jurisdictional Range Office. All these acts of contravention appeared to constitute an offences of the



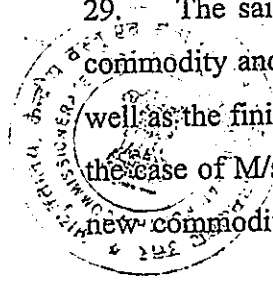
of the above acts of contravention on the part of the said unit i.e. M/s. Hindustan Roofers Company, Plot No. 1/8, Survey No. 398 &399, New Ahmedabad Industrial Estate, Moraiya,

26. The noticee submitted that they are job worker and had installed one machine received from M/s. Sensitive Engineering on Invoice No. R7 dated 24.8.2014. They submitted that the installed machine could perform certain functions such as decoiling, roll forming, cutting and cramping, but incapable of doing Corrugation or Profile Cutting of M.S. Sheets. They stated that even prior to receipt of machine, they had taken registration with the Service Tax Authority under the **Business Auxiliary Service** head. The ST-2 registration certificate was issued to them on 11.7.2014 and they were in firm believe that the cutting and bending activity which they are going to do attracts service tax and accordingly, registered with the department under the appropriate head of Business Auxiliary Service.

27. They further submitted that they were doing job work as decoiling, cutting, bending on sheets which were cleared from the Plant of large scale manufacturers such as Jindal, TATA, Essar, etc. Hence Colour Coated Sheets, which was the only raw material, was manufactured in large scale plants and always received on valid duty paying Cenvatable Invoices. They added that they were in bonafide belief that activity at their end does not amount to manufacture, they did not take registration with Excise Department and instead registered themselves with Service Tax Department and not availed even Cenvat Credit on valid duty paying documents. As they were in bonafide belief regarding levy of Service Tax, they have charged Service Tax on job charge invoices. They added that during the course of visit, the department advised them to take registration with Excise Department and charge Excise Duty on job charges. As per the advice, they immediately registered with the department and started making payment under the Excise Duty Head. It is also an admitted fact that at the relevant point of time, the Excise Duty rate was lesser than the Service Tax. So effectively they had paid lesser duty subsequent to visit of departmental Officers. They had been paying higher tax under the Service Tax levy before the visit.

28. In their defence the noticee further submitted that the raw material colour coated sheets itself is finished goods meant to be used as roofing material. It is received in coil form and is cut in length as per the requirement of individual customer at their premises. Sometimes, it was also bended at the end as per the requirement of particular customer. However, the sheets which were manufactured as per Indian Standards do not undergo any change in basic characteristics of the product. The sheets which were generally of IS Grade 277 were to be used as roofing material. The IS Grade Sheets were further coated in the plants as per standards prescribed and it does not undergo any change in any characteristics of the product. The sheets were meant to be used as roofing material and was used as such after cutting. They added that machine installed at their premises besides undertaking decoiling and cutting also does pressing at some places so that the rain water movement on roof can be speedily attained and no process neither corrugation nor profiling was done at their end. They added that they were not doing profiling activity as alleged in the SCN as profile cutting activity is generally undertaken on computerized machines, which undertake precision cutting on pin point accuracy.

29. The said noticee further added that cutting and bending does not bring into existence a new commodity and the coils manufactured by Jindal, TISCO, are meant to be used as roofing material as well as the finished goods are to be used as roofing material. They said that department had relied upon the case of M/s. Hansa Metallics in Para 12.1 to hold that aforesaid activity amount to manufacture of new commodity. In this regard, they submitted that the aforesaid observation in Para 12.1 is also



incorrect. The view expressed in the judgment was not accepted by the Hon'ble Supreme Court and the Hon'ble Supreme Court while remanding the matter back, has specifically observed that the legal issue whether the corrugation amount to manufacture or not is kept open to be considered in appropriate case. Hence, the view in Hansa Metallics is not ratified by the Hon'ble Supreme Court. Also contended that the Ld. Commissioner (Appeals) in their case only had held that they entertained a bona fide belief that activity does not amount to manufacture. There was no intention to evade duty by clandestinely removing roofing sheets. The aforesaid order is accepted by the department. Hence the submission on bona fide stands approved by the appellate authority.

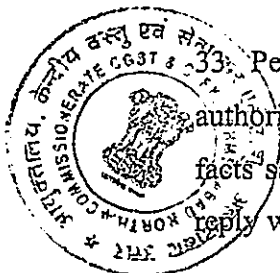
30. They further said that that the activity of corrugation whether amounts to manufacture or not is kept open by Hon'ble Apex Court and demand when a particular matter reaches before the Higher Judicial Forum on interpretational issue, the demand for extended period is not sustainable and requires to be quashed and set aside. They relied upon the order of Hon'ble Tribunal in the case of M/ s. Sunil Metal Corporation reported at 2009 (16) STR 469 for the aforesaid purpose. They again stated that they were in bonafide believe that the activity is covered under the head "business auxiliary service" of the finance act and accordingly, took registration with the department and in such case the demand for the extended period is not sustainable. They relied upon the judgment CCE Vs Royal Enterprises reported at 2016 (337) E.L.T. 482 (S.C.), Pushpam Pharmaceuticals Company Vs CCE 1995 (78) E.L.T. 401 (S.C.), Padmini Products Vs CCE reported at 1989 (43) E.L.T. 195 (S.C.), and Jaiprakash Industries Ltd. Vs. Commissioner reported at 2002 (146) E.L.T. 481 (S.C.) regarding non applicability of extended period.

31. It has been further submitted by the noticee that in identical facts and circumstances, the Hon'ble Tribunal in the case of K.R. Packaging reported at 2017 (51) STR 438 had held that though the activity amount to manufacturers, service tax having been paid and accepted by the department, the demand for excise duty is not sustainable. They reproduced the relevant para of the said order in their reply.

32. They also relied on the case of M/ s. Osnar Chemical Pvt. Ltd., reported at 2009 (240) ELT 115, where view was taken that once department accept payment of Service Tax and does not object to the aforesaid, the question of treating process as manufacture and levying Central Excise Duty does not arise. They, again, submitted that demand for extended period is not sustainable and requires to be quashed and set aside.

Personal Hearing

33. Personal hearing in the matter was held on 10.08.2020 wherein advocate Shri Nirav P Shah authorized representative of M/s Hindustan Roofers Company appeared before me and reiterated the facts same as mentioned in their reply submitted on 10.07.2020. Also requested to submit additional reply which was submitted on 22.08.2020.



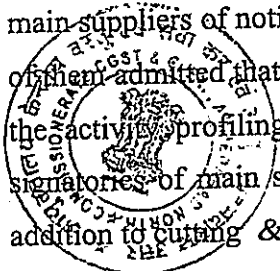
Discussion and Findings

34. I have carefully gone through the facts of the case, the material on record and the submissions of the noticee M/s HRC.. The issues involved are :

- (i) whether the activity carried out by the noticee amounts to manufacture
- (ii) if the activity amounts to manufacture whether central excise duty can be demanded when the noticee had claimed that they had already paid service tax with a belief that the activity is service tax leviable and filed ST-3 returns.
- (iii) whether the department has rightly demanded Central Excise duty under Section 11A(4) of the Central Excise Act, 1944.

35. It was alleged in the show cause notice that the noticee was engaged in manufacturing of M.S. Profile Sheets from Galvanized sheets/coils by process of corrugation, cutting & bending. They had installed one profile machine & crimping/bending machine of, SENSITIVE Company for the manufacturing process of M.S. Profile Sheets & crimping/bending of MS Coil/profile and was evading Central Excise duty by way of misusing the Job work Notification No.83/94-CE, as amended and Notification No.214/86-CE, as amended. It was alleged that the noticee had carried out activity of manufacturing and removed the finished goods without discharging applicable central excise duty by reasons of willful misstatement, suppression of facts and contravention of the provisions of the said Act and rules made there under with an intent to evade payment of Central Excise Duty. However, the noticee had submitted that they were in bonafide belief that activity at their end does not amount to manufacture, they did not take registration with Excise Department and instead registered themselves with Service Tax Department and paid applicable service tax, therefore, no intention to remove the finished goods without discharging applicable central excise duty by reasons of willful misstatement, suppression of facts.

36. Firstly, I take up the matter to investigate the fact whether activity carried out by the noticee amounts to manufacture or otherwise. The noticee had submitted that they were doing cutting and bending activity on Galvanized Sheets/coils supplied by their customer and no activity of profiling/corrugation was carried out at their end. Also submitted that the machine installed at their premises was incapable of performing activity of profiling/corrugation and therefore no activity of manufacturing has taken place. It has been noticed that during statement of ShriYogesh Kantibhai Patel, partner of the noticee, it has been admitted that they received colour coated steel coils from M/s Roshan Steel Corporation, A'bad and M/s Jayhind Steel Syndicate, A'bad and after doing corrugation activity they cleared the same on job charges amount. Also, ShriYogesh Kantibhai Patel in their statement recorded on 04.01.2018 stated that on receipt of such materials i.e. Galvanized Sheet, Galvanized Coil, PPGI Coil they did cutting, bending and profiling as per the size & requirements of their suppliers. The main suppliers of noticee were M/s Jayhind Steel Syndicate and M/s Roshan Steel Corporation and both of them admitted that they were sending Galvanized Sheet, Galvanized Coil, PPGI Coil to M/s HRC for the activity of profiling/corrugation. In view of the statements of partner of noticee and authorised signatories of main suppliers, I find that the noticee was carrying activity of profiling/corrugation in addition to cutting & bending of the coil.



37. The term corrugation has not been defined under Central Excise Act, 1944, therefore to derive conclusion whether it amounts to manufacture or otherwise one has to go through the definition of the term available in different dictionaries and changes occurred to the Galvanized sheet/coil after doing the corrugation activity. As per Pocket Oxford Dictionary, the meaning of corrugation and related terms is as under:-**Corrugate (-ting)** (esp. as **corrugated** adj.) form into alternate ridges and grooves, esp. to strengthen (*corrugated* iron). **Corrugation** (Latin *rugawrinkle*)

As per Cambridge dictionary, the word corrugated & related terms means as under:-

Corrugate

(especially of sheets of iron or cardboard) having parallel rows of folds that look like a series of waves when seen from the edge:

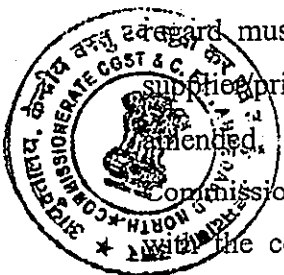
The roof is made from sheets of corrugated iron.

I find that meaning of the term as per dictionary and other literatures is well discussed in the Judgment of Hon'ble High Court of Punjab & Haryana (published 2001 (133) E.L.T. 543 (P & H)) in the case of M/s. HANSA METALLICS LTD. Versus UNION OF INDIA which is relevant to the present case.

38. From the above meanings and definitions it has been observed that corrugation of sheets/coils is to feature repetitive folds on their surface and because of their unique shape, they have more utility and enhanced strength. The process of corrugation with ridges and grooves make sheets/coils stronger than before and different product. In view of the above discussion, I find that the process of corrugation of galvanized sheets/coils leads to the creation of a product which has different commercial identity/name, marketability and use. Therefore, the activity carried out by the noticee amounts to manufacture in terms of definition contained in section 2(f) of Central Excise Act, 1944.

39. It is not disputed that supplier/principal manufacturer of the noticee had not filed any declaration to get the exemption as a job worker under Noti. No.214/86-CE, as amended, also no declaration has been filed to the jurisdictional Assistant Commissioner of job worker by the supplier/principal manufacturer in order to get value based exemption under Noti. No.83/94-CE, as amended. It is clear that to get the exemptions under said notifications the principal manufacturer/ supplier must file a declaration in writing to the jurisdictional Assistant Commissioner of job worker. I find that the conditions laid down under Noti. No.83/94-CE, as amended and Noti. No.214/86-CE, as amended, was not fulfilled by the noticee and therefore the exemption was not available to the said noticee.

40. I hold that in order to get the exemption as a job worker under Noti. No.214/86-CE, as amended, the job worker must process a part/series or whole of manufacturing process and a declaration in this regard must be made in writing to the jurisdictional Assistant Commissioner of job worker by the supplier/principal manufacturer and in order to get value based exemption under Noti. No.83/94-CE, as amended, a declaration in this regard must be made in writing to the jurisdictional Assistant Commissioner of job worker by the supplier/principal manufacturer. In the event of failure to comply with the conditions laid down under Noti. No.83/94-CE, as amended and Noti. No.214/86-CE, as amended, the exemption was not available and central excise duty leviable was required to be paid in full on the goods manufactured by such job worker.



41. I find that the whole manufacturing process involved profiling/corrugation and this whole manufacturing process was carried out at the factory premises of M/s HRC and no other process prior to or after the corrugation was carried out by the suppliers and suppliers didn't have any manufacturing facility. Also, the raw material was sent directly to the noticee by the suppliers and after the corrugation/profiling, in case of M/s Jayhind Steel Syndicate & local dealers the finished goods were sent to the customers and in case of M/s Roshan Steel Corporation, the material although was received back at their godown was sent to the customers but without any further processing.

42. Further, the complete manufacturing process was carried out by the noticee and no declaration was filed either by the suppliers or by the noticee before the jurisdictional Assistant Commissioner, therefore central excise duty exemption on clearance of finished goods was not available to the noticee and central excise duty is required to be recovered in full at applicable rate on the value of the finished goods. Therefore, I hold that the Show Cause Notice has rightly issued by the Department demanding Central Excise duty, interest and proposing penalty on the noticee and its Partners/Authorised signatories.

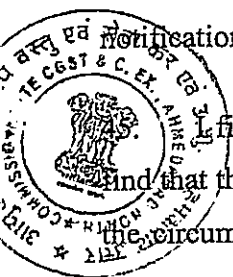
43. Now, I take up the matter whether central excise duty can be demanded when the noticee had claimed that they had already paid service tax with a belief that the activity was service tax leviable and filed ST-3 returns. In view of the discussion above, I find that the activity made by the noticee amounts to manufacture and exemption was not available under Noti. No.83/94-CE, as amended and Noti. No.214/86-CE, as amended in view of non compliance of the procedure laid down under the said notifications, therefore, Central Excise duty was leviable on the activity carried out by the noticee. However, the said notice in their defence reply submitted that even if the activity carried out by them amounts to manufacture central excise duty can not be demanded when they had already paid service tax during the relevant period and relied upon the judgment in case of K.R. Packaging reported at 2017 (51) STR 438. To have a primary view of the position, I have gone through the ST-3 returns filed by them during the notice period. On going through the ST-3 returns filed by the noticee I find that that they have not discharged the Service Tax. Therefore, I find that the noticee has neither fulfilled the Central Excise duty obligation nor met Service Tax obligation. They have also not produced any proof showing the duty discharging obligation by their clients. Under the circumstances, I hold that the Department has correctly demanded the Central Excise duty.

44. The Hon'ble Supreme Court in the case of COMMISSIONER OF CUS. (IMPORT), MUMBAI Versus DILIP KUMAR & COMPANY reported in 2018 (361) ELT 577 (SC) has held that -

"Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption

notification".

I find that the said noticee has not followed the conditions of the exemption Notification. I also find that they have not discharged the Service Tax liabilities which they claimed to have fulfilled. Under the circumstances, I am of the view that they are not entitled for the exemption of Notification No.



83/94-CE, as amended and Noti. No.214/86-CE, and they have to discharge the liabilities of Central Excise duties. Therefore, I find that the Central Excise duty, interest demanded in the present show cause notice is correct and legally sustainable.

46. In reply to the show cause notice, the noticee has stated that they believed that the activity is covered under the head of "business auxiliary service" of the Finance Act, 1994 and accordingly took registration with the Department. They also stated that once department accept payment of Service Tax, the question of treating the process as manufacture and levying Central Excise Duty does not arise. It is not proper to levy Service Tax and Central Excise Duty simultaneously. On going through the ST-3 Returns for the period of April-September 2014-15, October-March-2014-15. I find that the noticee has neither paid the Service Tax on the disputed service nor he has produced any proof regarding fulfillment of tax liabilities. So, their claim that they have fulfilled the Service Tax is misleading. Further, I also find that they have also not fulfilled the conditions of the Notification No. 83/94-CE, as amended and Noti. No.214/86-CE, as they have not intimated the jurisdictional Central Excise authorities. In fact, they had not taken Central Excise Registration at the initial stages. Further, they have not produced any evidence to prove that the principal manufacturer has fulfilled the Central Excise Duty or Service Tax.

47. The noticee failed to furnish the declaration under Noti. No.214/86CE, as amended read with Noti. No.83/94-CE, as amended, the noticee had cleared the Excisable goods without payment of applicable central excise duty and therefore the applicable central excise duty was required to be recovered in at the value of clearance in the invoices issued by the suppliers in terms of Rule 10A *ibid*.

48. The noticee in their defence has argued that no Central Excise duty is demandable from them, extended period can not be invoked in the present case and also argued against imposing penalty and stated that the show cause is not sustainable in law. I find that firstly, they have not followed the conditions stipulated in the Notification No.83/94-CE and 214/86-CE. Secondly, from the documents available, they have not fulfilled the Service Tax/Central Excise obligations and they have not submitted any proof that their clients fulfilled the Tax/duty on the disputed goods. Further, I find that there is definitely an attempt on the part of the noticee to evade Central Excise duty in this case. Had the Department not carried out the search operations, this case would have gone unnoticed resulting revenue leakage. Therefore, I hold that show cause notice proposed by the Department under Section 11A(4) of the Central Excise and the penalty proposed under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC is justifiable.

49. The noticee submitted various case laws in their defence including Orders passed by the Commissioner (A) in their own case. I find that the said case laws are not applicable to the present case as the facts and circumstances of the present case is different. They have not followed the conditions of the Notification for which exemption has been sought by them. They also not paid any Central Excise duty/Service Tax on the goods under dispute. In fact, they obtained Central Excise Registration only after the Departmental team carried out search operations. The Commissioner (A) vide OIA No.AHM-EXCUS-002-APP-229-230-17-18 has only remanded the case to ascertain whether the activity carried out by the noticee amounts to manufacture or otherwise. Under the circumstances, their arguments can

not be accepted.

50. In view of the above discussion it is observed that the said unit had contravened the following provision:

- (i) Section 3 of the Central Excise Act, 1944, in as much as they failed to levy and collect duty;
- (ii) Rule 4 of the Central Excise Rules, 2002, in as much as they have not correctly discharged Central Excise duty leviable on the goods prepared and captive consumed during the period from 08.09.2014 to 02.12.2015;
- (iii) Rule 6 of the Central Excise Rules, 2002, in as much as they fail to assess the correct duty payable on the excisable goods;
- (iv) Rule 8 of the Central Excise Rules, 2002, in as much as they failed to make the payment of duty within due date;
- (v) Rule 9 of Central Excise Rules, 2002, in as much as the party has not obtained Registration from the department.
- (vi) Rule 10 of the Central Excise Rules, 2002, in as much as, they had not maintained the daily stock account of the finished goods in the Daily Stock Register (RG-1)

51. The said unit had taken the Central Excise Registration on 04.12.2015 only after the search proceedings by the Central Excise Officers and hence had contravened the provisions of Rule 9 of the Central Excise Rules, 2002, in as much as, they failed to register themselves with the Central Excise department and Rule 10 of the Central Excise Rules, 2002, in as much as, they had not maintained the daily stock account of the finished goods in the Daily Stock Register (RG-1). Therefore, the investigation conclusively established that the said unit had failed to account for the production of their fully finished excisable goods in their RG-1 and suppressed the production with an intention to clear the same without payment of Central Excise duty.

52. Above acts of contravention on the part of the said unit appeared to have been committed by reasons of willful misstatement, suppression of facts and contravention of the provisions of the said Act and rules made there under with intent to evade payment of Central Excise Duty.

53. Further, it is noticed that M/s. Hindustan Roofers Company from 08.09.2014 to 02.12.2015 cleared the goods viz. profiled/corrugated MS Sheets valued at Rs.7,90,26,325/- without discharging Central Excise duty liability of Rs. 98,56,592/- (Rupees Ninety Eight Lakh Fifty Six Thousand Five Hundred Ninety Two Only) and therefore the duty involved in the manufacture and clearances of finished goods was required to be recovered from them under the Section 11A (4) of the Central Excise Act, 1944 along with interest at applicable rate was also required to be demanded and recovered from them under the section 1 IAA of the Central Excise Act, 1944.

54. The noticee had manufactured the above referred excisable goods without obtaining a Central Excise Registration; without following proper Central Excise procedures; without issuing Central Excise Invoices; without filing relevant returns with the concerned Central Excise Authorities; and

without payment of Central Excise duty leviable thereon. Thus, they had failed to determine / discharge / assess the Central Excise duty on the goods i.e. 'Profiled/corrugated MS Sheets', which were manufactured and removed by them and have thus contravened the provisions of Rules 4, 5 and 6 of Central Excise Rules, 2002. They had also failed to pay / debit the appropriate Central Excise duty in respect of the said goods removed from their factory, and had therefore contravened provisions of Rule 8 of Central Excise Rules, 2002. They had also contravened provisions of Rule 9 of Central Excise Rules 2002, by failing to obtain the Central Excise Registration. They had also contravened the provisions of Rule 10 of Central Excise Rules 2002 by not maintaining the Daily Stock Account. They had also failed to issue proper invoices in respect of the said goods cleared from their factory and as such they have contravened Rule 11 of Central Excise Rules, 2002. They had contravened Rule 12 of Central Excise Rules, 2002, as they failed to file Central Excise returns with jurisdictional Range Office. All these acts of contravention appeared to constitute an offences of the nature and type as described in clause (a), (b), (c) and (d) of Rule 25 of Central Excise Rules, 2002.

55. I find that all the above acts of contravention on the part of the said unit i.e. M/s. Hindustan Roofers Company, Plot No. 1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad been committed by reasons of willful mis-statement, suppression of facts and contravention of various provisions of the said act and rules made there under with intent to evade the payment of central excise duty by them as mentioned herein above and the noticee had rendered themselves liable for penalty as applicable under the provisions of Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

56. I find that ShriYogesh Kantilal Patel, Partner & ShriNayanKantilal Patel, Authorized signatories of M/s. Hindustan Roofers Company, Ahmedabad was fully concerned in the transporting, removing, depositing, keeping, selling or purchasing etc with the excisable goods which he knew or had reasons to believe that the same were liable for confiscation under the said Act or the rules framed there under. Without his connivance, the clandestine manufacture and removal of the Excisable goods would not have been possible. These acts on the part of him had rendered liable for personal penalty under Rule 26 of Central Excise Rules, 2002.

57. In view of my findings above, I pass the following orders:-

ORDER

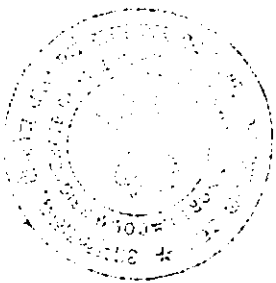
(i) I confirm the Central Excise Duty of Rs. 98,56,592/- (Rupees Ninety Eight Lakh Fifty Six Thousand Five Hundred Ninety Two Only) on the finished goods (profiled/corrugated MS Sheets) valued at Rs 7,90,26,325/- cleared by M/s.Hindustan Roofers Co, Ahmedabad without discharging Central Excise Duty for the period from 08.09.2014 to 02.12.2015, and order that the Central Excise duty on the said clearance be recovered from them in terms of the provisions of Sec. 11A (1) (4) of the Central Excise Act, 1944;

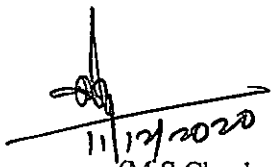
(ii) I order M/s. Hindustan Roofers Co, Ahmedabad to pay interest at the prescribed rate on the amount of Central Excise duty confirmed above under Section 11 AA of Central Excise Act,

1944.

- (iii) I impose a penalty of Rs.98,56,592/- (Rupees ninety eight lakhs fifty six thousand five hundred ninety two only) on M/s.Hindustan Roofers Co, Ahmedabad, under Rule 25 of Central Excise Rules, 2002 read with Section 11AC (1) (e) of Central Excise Act, 1944.
- (iv) In terms of Section 11AC (1) (b) of the Central Excise Act, 1944, if M/s. Hindustan Roofers Company. Ahmedabad, pays the Central Excise duty determined at Sl. No. (i), above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Hindustan Roofers Company, Ahmedabad shall be twenty-five per cent of the penalty imposed at Sr.No(iii) above, subject to the condition that such reduced penalty is also paid within the period so specified.
- (v) I impose a personal penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) on Shri Shri Yogesh Kantilal Patel, Partner of M/s. Hindustan Roofers Company, Plot No. 1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad under Rule 26 of Central Excise Rules, 2002.
- (vi) I also impose a personal penalty of Rs 1,00,000 (Rupees One Lakh Only) on Shri Shri Nayan Kantilal Patel, Authorized signatory of M/s. Hindustan Roofers Company, Plot No. 1/8, Survey No. 398 &399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad under Rule 26 of Central Excise Rules, 2002.

58. The Show Cause Notice No.V.73/15-66/OA/2018 dated 10.12.2018 issued to M/s.Hindustan Roofers Company, Plot No.1/8, Survey No.398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad, Shri Yogesh Kantilal Patel, Partner of M/s. Hindustan Roofers Company and M/s Shri Nayan Kantibhai Patel Authorised Signatory of M/s.Hindustan Roofers Company, Plot No.1/8, Survey No.398& 399, New Ahmedabad Industrial Estate Moraiya, Ahmedabad is disposed-off in the above manner.




11/12/2020
(M.S.Chauhan)
Additional Commissioner,
Central CGST & Central Excise,
Ahmedabad-North.

F.No.V.73/15-66/OA /2018

Date : 11.12.2020

By Registered A.D.

To,

1) M/s. Hindustan Roofers Company,
Plot No.1/8, Survey No.398 & 399,
New Ahmedabad Industrial Estate,
Moraiya, Ahmedabad,

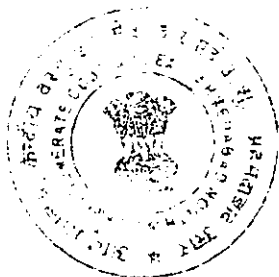
2) Shri Yogesh Kantilal Patel, (Partner of)

M/s.Hindustan Roofers Company,
Plot No.1/8, Survey No.398 & 399,
New Ahmedabad Industrial Estate,
Moraiya, Ahmedabad,

3) Shri Nayan Kantibhai Patel, (Authorised Signatory)

M/s.Hindustan Roofers Company,
Plot No.1/8, Survey No.398 & 399,
New Ahmedabad Industrial Estate,
Moraiya, Ahmedabad,

- Copy to:- 1) The Commissioner, Central GST & Central Excise, Ahmedabad North
2) The Deputy Commissioner, CGST & Central Excise, Division- IV, Ahmedabad North.
3) The Superintendent, Range I, Division- IV, CGST & Central Excise, Ahmedabad North.
4) Guard File.



1) The Commissioner, Central GST & Central Excise, Ahmedabad North
2) The Deputy Commissioner, CGST & Central Excise, Division- IV, Ahmedabad North.
3) The Superintendent, Range I, Division- IV, CGST & Central Excise, Ahmedabad North

