IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No. 17 of 2010 a/w ITA Nos. 18 to 21, 27 and 34 of 2010, 18, 19, 25 and 26 of 2011, 8, 10, 18, 20, 22, 23, 24, 25 and 34 of 2012, 4013 and 4018 of 2013 and 2 of 2014.

Judgment reserved on: 01.09. 2014

Date of decision: September 10, 2014

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1. ITA No. 17 of 2010

Commissioner of Income Tax ....Appellant

Vs.

Pawan Aggarwal …. Respondent.

2. ITA No. 18 of 2010

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Wire Industries (P) Ltd. …. Respondent.

3. ITA No. 19 of 2010

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Winding Wire Products …. Respondent.

4. ITA No. 20 of 2010

Commissioner of Income Tax ....Appellant

Vs.

J.B. Conductors & Cables …. Respondent.

5. ITA No. 21 of 2010

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Steel & Wires …. Respondent.

6. ITA No. 27 of 2010

Commissioner of Income Tax ....Appellant

Vs.

Pawan Aggarwal …. Respondent.

7. ITA No. 34 of 2010

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Winding Wire Products .... Respondent.

8. ITA No. 18 of 2011

Commissioner of Income Tax ....Appellant

Vs.

Pawan Aggarwal .... Respondent.

9. ITA No. 19 of 2011

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Winding Wire Products .... Respondent.

10. ITA No. 25 of 2011

Commissioner of Income Tax ....Appellant

Vs.

M/s Brijsons Wire Products .... Respondent.

11. ITA No. 26 of 2011

Commissioner of Income Tax ....Appellant

Vs.

M/s Brijsons Hetreat .... Respondent.

12. ITA No. 8 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s J.B.Conductors & Cables .... Respondent.

13. ITA No. 10 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s J.B.Conductors & Cables .... Respondent.

14. ITA No. 18 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s United Wire Products .... Respondent.

15. ITA No. 20 of 2012

Commissioner of Income Tax ....Appellant

Vs.

Pawan Aggarwal .... Respondent.

16. ITA No. 22 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s J.B. Conductors & Cables …. Respondent**.**

17. ITA No. 23 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Steel & Wire …. Respondent**.**

18. ITA No. 24 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Steel & Wire …. Respondent.

19. ITA No. 25 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Steel & Wire …. Respondent**.**

20. ITA No. 34 of 2012

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Winding Wire Products …. Respondent.

21. ITA No. 4013 of 2013

Commissioner of Income Tax ....Appellant

Vs.

M/s Himachal Wire Industries Pvt. Ltd. …. Respondent.

22. ITA No. 4018 of 2013

Commissioner of Income Tax ....Appellant

Vs.

M/s J.B. Conductors & Cables …. Respondent.

23. ITA No. 2 of 2014

Commissioner of Income Tax ....Appellant

Vs.

M/s United Wire Products …. Respondent**.**

Coram

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?Yes

For the Appellant(s) : Mr. Vinay Kuthiala, Senior Advocate with Ms. Vandana Kuthiala and Mr. Gaurav Sharma, Advocates.

For the Respondent(s) : M/s Anuj Nag, J.S. Bhasin, C.S.Anand, Salil Kapoor and Vishal Mohan, Advocates, in respective appeals.

Tarlok Singh Chauhan, Judge

Since these appeals raise common question of law and facts, therefore, the same are being taken up together for consideration and disposal.

2. The assessees have industrial undertaking in backward area of Himachal Pradesh and have claimed deductions under Section 80 IC of the Act. The case of the assessees is that they are engaged in manufacturing of paper insulated wires and strips of copper and aluminium, which are used in the oil filled electrical transformers. It is claimed by the assessees that wires are drawn from wire rods and thereafter insulation coating is done on the wires with different chemicals by enamel coating, annealing and then paper is wrapped on the wire to make it insulated. Some of the assessees are also manufacturing insulated wire strips and their product is further used to manufacture coils.

3. In the regular assessment made, the A.O. held that the activity of drawing wires of thinner gauges from wires and rods of thicker

[1] *Whether reporters of Local Papers may be allowed to see the Judgment ?*

gauges does not amount to manufacture or production as the original commodity i.e. wire did not undergo any change in the process and the resultant commodity was also wire, albeit of different dimensions. To come to such conclusion, he relied upon the judgment of the Hon'ble Supreme Court in ***Collector of Central Excise vs. Technoweld Industries Ltd, (2003) 11 SCC 798.***

4. The assessment was confirmed in appeal by the CIT(A), who agreed with the AO that no new product had come into existence as a result of the process carried out and hence there was no manufacture or production within the meaning of Section 80 IC.

5. The assessees then filed appeal before the Income Tax Appellate Tribunal Chandigarh Bench (B) (for short 'ITAT'), who vide impugned orders allowed the appeals. It is being held that the process carried out by the assessees amounts to manufacture or production or both. It is against these orders passed by the ITAT, the department has come up in appeal.

6. The appeals have been admitted on the following substantial questions of law:

1. *Whether the process of drawing wire of thinner gauge from wire or rods of thicker gauge, followed by finishing processes like annealing would amount to manufacture or production or consequently whether the assessee was eligible for deduction under Section 80 IC of the Income Tax Act.*
2. *Whether the impugned judgment is contrary to the ratio of the judgment of the Hon'ble Supreme Court in Collector Central Excise vs. Technoweld Industries.*

7. We have heard learned counsel for the parties and have also gone through the records carefully.

Question No.1:

8. There is no dispute raised by the department regarding the assessees being entitled to deductions under Section 80 IC of the Act. The only dispute raised by the revenue is that the process undertaken by the assessees does not constitute 'manufacture' or 'production' and accordingly, the profit and gain derived from such activity have been denied deductions under Section 80 IC of the Act.

9. On the other hand, the respondents contend that the process of drawing wire from wire rods constitutes manufacture or production of article or thing in terms of Clause (a) of sub-section (2) read with Section 80 IC (1) of the Act.

10. The ITAT in its order dated 30.11.2009 has noted the contention of the respondents (who were the appellants before it) regarding the various processes of production and manufacture undertaken by the respondents and observed as follows:

> ***"……in the process of drawing of wires from wire rods, the input is firstly reduced in size through carbide dies i.e. wire-rod is drawn to smaller sizes such as intermediate wire, fine wire and, ultra fine wire. These wire rods, which constitute raw material, could either be steel rods or copper rods or aluminium rods. It has been further stated that to facilitate the drawing of wire at high speeds, the wire is passed through a dry powered lubricant so as to avoid sticking of the wire to the die surface and, this process done at high speeds, results in tensile pulling of the wire, which produces residual stresses and, increases its temperature. These stresses can cause distortions in the wire, cracking and embrittlement of the wire, which could result in premature breaking in service. To overcome these deficiencies, the wire is heated above its re-crystallization temperature to allow the metal grains to reform and relieve the stress. This process is called annealing. Further, to protect from oxidation, which would effect the mechanical and physical properties, the wire is galvanized. In other words, the process of drawing of wire involves following steps – annealing,***

pickling and, galvanizing, which can be briefly described as hereunder:

a) Annealing: Annealing is a heat treatment in which a material is exposed to an elevated temperature for an extended time period and then slowly cooled. It is the process by which metals and other material are treated to render them less brittle and more workable. Any annealing process consists of three stages, firstly, heating to the desired temperature, secondly, holding or soaking at that temperature and, cooling, usually to room temperature. This provides the following benefits to the materials; Relieves stresses; increases softness, ductility and toughness; produces a specific microstructure or homogenizes the existing microstructure; improves machinability, electrical properties, dimensional stability and formability for cold working, such as cold heading and stamping.

b) Quenching, Acid Pickling and Flux Aplication: After the annealing process, the wire is quenched in a water bath. This step is necessary to prevent overheating of the acid, the next step in the process. In the acid pickling step, the wire is passed through a hydrochloric acid solution. Pickling removes oxides resulting from the hot wire being exposed to oxygen and it remove any remaining lead coating on the wire from the molten lead bath. These contaminants must be removed or they will interfere with the zinc galvanizing process. On passing the wire through the hydrochloric acid bath, the acid reacts with any remaining lead to form lead chloride. The lead chloride is a byproduct from the process. In addition, the hydrochloric acid baths are discarded periodically when they have become contaminated. Any remaining traces of acid are then removed by rising the wire with hot water. The rinsing process is a multitank, counter-flow, hot water rinse system. The counter flow is necessary to ensure that the water is the last tank remains relatively clean and free of contaminants. The water is hot to minimize both the process time and the potential for surface oxide formation. The rinsing process results in acidic wastewater that is neutralized prior to disposal. Subsequently, the wire is dipped in a flux bath, usually a zinc ammonium chloride solution flux is an anti-oxidant, dissolving any residual oxides and preventing further oxidation of the surface prior to galvanizing. Any oxidized or contaminated area on the wire can cause poor

adhesion of the zinc coating the galvanizing process, leading to black spots and flaking. The flux does not cause adhesion of zinc and steel but only compensates for inadequate cleaning.

c) Galvanizing: Galvanizing is the practice of immersing clean, oxide-free iron or steel into molten zinc at about 860 F(above the melting temperature of 780 F) in order to form a zinc coating that is metallurgically bonded to the iron or steel surface. The zinc coating protects the surface against corrosion, oxidation and moisture. It shields the base metal from the atmosphere and, further the zinc provides anodic (or sacrificial) protection. The zinc protects the steel "Galvanizing", thus giving the process its name.

When the steel is dipped in the zinc bath, it heats up to above the melting temperature and a zinc iron reaction occurs, creating several layers of inter-metallic alloys that bond the outer layer of pure zinc to the steel. The reaction can only occur if the iron in the steel is in intimate contact with the liquid zinc and any surface contamination will impair this reaction.

d)Following the zinc hot dip, the wire is quenched in water to "freeze" the zinc layer and is then coiled or spooled, which is marketed as galvanized wire."

11. The above-mentioned processes were not contested by the revenue either before the authorities below or before this Court, yet, it is contended that such processes do not constitute 'manufacture' or 'production' of any article or thing within the meaning of Section 80 IC.

12. Now, what would appear from the aforesaid facts is that this Court is required to consider as to what would constitute 'manufacture' and 'production' under the Act. Indisputably, the word 'manufacture' was not defined under the Act, uptil the insertion of Section 2 (29BA) of the Finance (No.2) Act, 2009 introduced w.e.f. 1.4.2009, which reads as follows:

"29BA – "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing, -

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure."

Though, it may be noted here that this insertion has been made with effect from 1.4.2009, while we are dealing with the assessments prior to 1.4.2009.

13. The expression 'manufacture' as well as 'production' has come up repeatedly for interpretation and consideration not only before the various High Courts but even before the Hon'ble Supreme Court. The Hon'ble Supreme Court in ***India Cine Agencies vs. Commissioner of Income Tax (2009) 308 ITR 98*** considered the word 'manufacture' as also 'production' in the following manner:

"3. In Black's Law Dictionary, (5th Edition), the word `manufacture' has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". Thus by process of manufacture something is produced and brought into existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. (See Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s. Coco Fibres (1992 Supp. (1) SCC 290).

4. 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 it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture implies not only the production but also 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 that the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. (See Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan (1991 (4) SCC 473).

5. `Manufacture' is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that, in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. (See M/s. Saraswati Sugar Mills and others v. Haryana State Board and others (1992 (1) SCC 418).

6. The prevalent and generally accepted test to ascertain that there is `manufacture' is whether the change or 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, recognized 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 can be reached. Insistence on any sharp or intrinsic distinction between `processing and manufacture', results in an oversimplification of both and tends to blur their interdependence. (See Ujagar Prints v. Union of India (1989 (3) SCC 488).

7. To put it differently, the test to determine whether a particular activity amounts to `manufacture' or not is: Does a new and

different good 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 or several processes `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. (See Empire Industries Ltd. v. Union of India (1985 (3) SCC 314).

8. The aforesaid aspects were highlighted in Kores India Ltd., Chennai v. Commissioner of Central Excise, Chennai (2005 (1) SCC 385) in the background of Central Excise Act, 1944 (in short the `Excise Act') and Central Excise Rules, 1944 (in short the `Excise Rules') and Central Excise Tariff Act, 1985 (in short the `Tariff Act'). The stand of the revenue was that it amounted to "manufacture", contrary to what has been pleaded in these cases. This Court held that it amounted to manufacture.

9. The matter can be looked at from another angle. In Commissioner of Income Tax v. Sesa Goa Ltd. (2004 (271) ITR 331) this Court considered the meaning of word `production'. The issue in that case was whether the extraction and processing of iron ore amounted to manufacture or not in view of the various processes involved and the various processes would involve production within the meaning of Section 32A of the Act. It was inter alia observed as under:

> *"There is no dispute that the plant in respect of which the assessee claimed deduction was owned by it and was installed after March 31, 1976, in the assessee's industrial undertaking for excavating, mining and processing mineral ore. Mineral ore is not excluded by the Eleventh Schedule. The only question is whether such business is one of manufacture or production of ore. -The issue had arisen before different High Courts over a period of time. The High Courts have held that the activity amounted to "production" and answered the issue in question in favour of the assessee. The High Court of Andhra Pradesh did so in CIT v. Singareni Collieries Co. Ltd. [1996) 221 ITR 48, the*

Calcutta High Court in Khalsa Brothers v. CIT [1996] 217 TTR 185 and CIT v. Mercantile Construction Co. [1994] 74 Taxman 41 (Cal) and the Delhi High Court in CIT v. Univmine (P.) Ltd, [1993] 202 ITR 825. The Revenue has not questioned any of these decisions, at least not successfully, and the position of law, therefore, was taken as settled.

The reasoning given by the High Court, in the decisions noted by us earlier, is, in our opinion, unimpeachable. This court had, as early as in 1961, in Chrestian Mica Industries Ltd. v. State of Bihar [1961] 12 STC 150, defined the word "Production", albeit, in connection with the Bihar Sales Tax Act, 1947. The definition was adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning "amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort". From the wide definition of the word "production", it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit of the word "production" since ore is "a thing", which is the result of human activity or effort. It has also been held by this court in CIT v. N.C. Budharaja and Co. [1993] 204 ITR 412 that the word "production" is much wider than the word "manufacture". It was said (page 423) :

The word `production' has a wider connotation than the word `manufacture'. While every manufacture can be characterised as production, every production need not amount to manufacture ……..

The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and reside rodeos which emerge in the course of manufacture of goods."

10. In "Words and Phrases" 2nd Edn. by Justice R. P. Sethi the expressions `produce' and `production' are described as under:

"In Webster's New International Dictionary, the word "produce" means something that is brought forth either naturally or as a result of effort and work; a result produced. In Black's Law Dictionary, the meaning of the word `produce' is to `bring into view or notice; to bring to

surface'. A reading of the aforesaid dictionary meanings of the word `produce' does indicate that if a living creature is brought forth, it can be said that it is produced. (See Commissioner of Income Tax v. Venkateswara Hatcheries (P) Ltd. (1999 (3) SCC 632), Commissioner of Income Tax, Orissa and Ors. v. M/s N.C. Budharaja and Company and Ors. (1994 Supp 1 SCC 280).

Production or produce- The word `production' or `produce' when used in juxtaposition with the word `manufacture' takes in bringing into existence new goods by a process, which may or may not amount to manufacture. It also takes in all the byproducts, intermediate products and residual products, which emerge in the course of manufacture of goods. The expressions manufacture' and `produce' are normally associated with movables articles and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road and a building. (See Moti Laminates Pvt. Ltd. and Anr. v. Collector of Central Excise, Ahmedabad (1995 (3) SCC 23).

11. In Advanced Law Lexicon, 3rd Edn. by P. Ramanatha Aiyar, the expressions `production' and `manufacture' are described as under:

"'Production' with its grammatical variations and cognate expressions; includes-

(i) packing, labeling, relabelling of containers.

(ii) re-packing from bulk packages to retail packages, and

(iii) the adoption of any other method to render the product marketable.

`Production' in relation to a feature film, includes any of the activities in respect of the making thereof. (Cine Workers and Cinema Theatre Workers (Regulations of Employment) Act (50 of 1981) S.2(i).)

The word `production' may designate as well a thing produced as the operation of producing; (as) production of commodities or the production of a witness.

`Manufacture' includes any art, process or manner of producing, preparing or making an article and also any article prepared or

produced by manufacture. (Patent and Designs Act (2 of 1911), S.2(10).

`Manufacture' includes any process-

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

(ii) which is specified in relation to any goods in the section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture, or, and the word `manufacturer' shall be constructed 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 manufacturer on his own account.

(iii) which is specified in relation to any goods by the Central Government by notification in the Official Gazette as amounting to manufacture. (Central Excise Act (1 of 1944) S.2(f)).”

14. At this stage, it may be worthwhile to note that the ITAT in the order impugned before us has taken note of number of judicial pronouncements of not only the various High Courts but also of the Hon’ble Supreme Court and proceeded to determine the issue in the following manner:

“***9.1. Now, we may refer to some of the judicial precedents on the issue. The Hon'ble J & K High Court in the matter of CIT v. Abdul Ahad Najar, 248 ITR 744 (J&K) considered the question, whether the undertaking of a n assessee engaged in extraction of timber from forest and conversion of same into logs, planks, etc. constituted an industrial undertaking within the meaning of section 80J(4) of the Act or not ? In this case, the assessee claimed that it was engaged in the manufacture and production of articles. The case of the assessee was that the planks sawn out of logs and, articles produced therefrom were different in shape from the logs and the trees. However, the Assessing Officer did not accept the contention of the assessee as according to him the assessee did not manufacture or produce any article. According to the Assessing Officer, the process of converting trees into logs did not involve much sawing operations as after felling the trees, it had been cut into logs and sold as such. The Revenue also contended that the process of sawing of logs into planks also did not involve any manufacture of articles and that manufacturing process could not be carried out by bare hands without the aid of machinery. The***

claim of the assessee was, however accepted by the Appellate Commissioner, who held that the use of machinery was not indispensible to a manufacturing process and even for the conversion of the standing trees into logs, labour was required as something is converted into something else viz. logs. He was of the view that the logs could be said to be a new product emerging out of manufacturing process. He accordingly held that the assessee was entitled to deduction under section 80J of the Income-tax Act, which was confirmed by the Tribunal. The matter was considered by the Hon'ble High Court on the above facts. The Hon'ble High Court was of the view that in order to claim relief under section 80J, an industrial undertaking must manufacture or produce articles and it was a condition precedent. The Hon'ble High Court observed that the assessee cut trees in the forest, converted them not only into logs but also into planks and other articles for the purpose of sale. As a forest lessee, the assessee's business was to cut standing trees and to extract timber and convert the same into form of logs, planks, etc. f or the purpose of sale. It was observed that the logs and planks could never be known as trees ; that the two are undoubtedly different from the standing trees. The Hon'ble High Court accordingly upheld the stand of the assessee. It is clear from the above that the activity of the forest lessees of extraction of timber from the forest and conversion of the same into logs, planks, etc. is understood to be a manufacturing process. The Hon'ble High Court on the question of manufacturing further held as under:-

> ***"Otherwise also, it is clear that the activity undertaken by the assessee clearly amounts to manufacture and production of articles. The expressions 'manufacture' and 'produce' have not been defined in the Income-tax Act. The dictionary meaning of 'manufacture' is 'transform or fashion new materials into a changed form for use'. In common parlance, manufacture means production of articles from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labour-or by mechanical process. In other words, it means making of articles or materials commercially different from the basic components by physical labour or mechanical process, In its ordinary connotation, manufacture signifies emergence of new and different goods as understood in relevant commercial circles. So far as the meaning of the word 'produce' is concerned, though the word 'produce' has a wider connotation than the word 'manufacture', when used in juxtaposition with the word 'manufacture', it takes in bringing into existence new goods by a process which may not amount to manufacture. The activity of extraction of wood by the assessee from the forest by felling the trees and converting the same into logs, planks, sleepers and other articles, undoubtedly, falls within the definition of 'manufacture'."***

9.2. The Hon'ble Supreme Court in the matter of CIT v. N.C. Budharaja & Co. [1993] 204 ITR 412 (S.C) considering a similar point of law held, "The test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity."

9.3. The Hon'ble Supreme Court in the case of CIT v. Sesa Goa Ltd. reported i n 27 1 IT R 331 while considering the question under section 32A(2)(b)(iii) for grant of investment allowance dealt with the question of 'production' in a case where the assessee's industrial undertaking was engaged in the business of excavating, mining and processing mineral ore. Mineral ore was not excluded by the Eleventh Schedule. The only question was whether such business was one of manufacture or production of ore. The Hon'ble Supreme Court noted that the issue was dealt with by different High Courts over a period of time, and it was held that the activity amounted to "production" and answered the issue in question in favour of the assessee. The Hon'ble Supreme Court held as under :-

> ***"The reasoning given by the High Court, in the decisions noted by us earlier, is, in our opinion, unimpeachable. This court had, as early as in 1961, in Chrestian Mica Industries Ltd. v. State of Bihar [1961] 12 STC 150, defined the word 'production', albeit, in connection with the Bihar Sales Tax Act, 1947. The definition was adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning 'amongst other things that which is produced; a thing that results from any action, process or effort; a product; a product of human activity or effort'. From the wide definition of the word 'production', it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit of the word 'production' since ore is 'a thing', which is the result of human activity or effort ...***
>
> ***It is, therefore, not necessary, as has been sought to be contended by learned counsel for the Revenue, that the mined ore must be a commercially new product ...***
>
> ***Learned counsel appearing on behalf of the assessee, correctly submitted that the other provisions of the Act, particularly section 33(1)(b)(B) read with Item No. 3 of the Fifth Schedule to the Act, would show that mining of ore is treated as 'production'. Section 35E also speaks of production in the context of mining activity. The language of these sections is similar to the language of section 32A(2). There is no reason for us to assume that the word***

'production' was used in a different sense in section 32A." [underlined for emphasis by us]

9.4. Thus, having regard to the proposition as discussed above, particularly in view of the decision in Sesa Goa Ltd (supra) it is evident that, that the word "production" has been used in a very wide sense to mean-to bring out a new product, albeit not a commercially new product. Infact, it may be relevant to state here that, in the aforesaid judgment, The Hon'ble Supreme Court affirmed the judgment of the Hon'ble Karnataka High Court in the case of CIT v. Mysore Minerals Ltd. 250 ITR 725 (Kar.) wherein activity of cutting granite blocks into slabs and sizes and polishing them was held to be manufacturing or production of goods. It was held therein as under:

" Section 80-I also refers to profits and gains in respect of an industrial undertaking. In view of the decision given in the case of the assessee, we are of the view that the Appellate Tribunal is right in law in coming to the conclusion that the original assessment which granted the relief under sections 32A and 80-I to the assessee was not erroneous and the inference of the Commissioner of Income-tax under section 263 was not proper. The Tribunal is also right in law in holding that extracting granite from quarry and cutting it to various sizes and polishing should be considered as manufacture or production of any article or thing and the assessee's business activity must be considered as an industrial undertaking for the purpose of granting reliefs under sections 32A and 80-I of the Income-tax Act, 1961."

9.5. Further, following the judgements in the case of Sesa Goa Ltd. (supra), Mysore Minerals Ltd (supra) and, another judgement of the Hon'ble Supreme Court in the case of Kores India Ltd v CCE reported in 174 ELT 7 (2004), the Hon'ble Rajasthan High Court in the case of Arihant Tiles and Marbles Ltd v ITO 295 ITR 148 (Raj) held as under:

"Apparently, the principle applied by the Supreme Court was that <u>if without applying the process a thing in its raw form cannot be usable and it is made usable for particular purpose, it amounts to manufacture.</u>

The court approved the principle enunciated in Saraswati Sugar Mills v . Haryana State Board [1992] 1 SCC 418 that essence of manufacture is a change of one object to another for the purpose of making it marketable.

On this principle, the court accepted the contention that by cutting jumbo rolls into smaller sizes, a different commodity has come into existence and the commodity which was already in existence serves no purpose and no commercial use, after the process. A new name and character has come into existence. The original commodity after processing does not possess original identity. Obviously, so far as

physical characteristic of jumbo rolls and its shorter version in the form of typewriter and telex roll may have the same physical properties, none the less on the basis of their different use as a marketable commodity and after being cut, the same cannot be used for the purpose for which it could be used in original shape, the activity was held to be manufacture.

The principle aptly applies to the present case. Here also, the original commodity, namely, marble block could not be used for building purposes as such until it is cut into different sizes to be used as building material. It is only by the process of cutting the marble block into slabs and tiles that it is made marketable. The marble block cannot be used for the same purpose as the marble slab or tile can be used and after the marble block has been cut into different sizes, the end product by putting it simultaneously cannot be used as a block. The principle in Kores India Ltd.'s case [2004] 3 RC 613 (SC) supports the contention of appellant." [underlined for Emphasis by us]

9.6. Also, the aforesaid view has been followed by the Hon'ble Bombay High Court in the case of CIT v Fateh Granite (P) Ltd 314 ITR 32 (Bom.) and, the Hon'ble Delhi High Court in the case of CIT v Sophisticated Granite Marble Industries reported 225 CTR 410 (Del) and, it was held that, process of purchasing marble slabs and then converting these into tiles by applying various processes like cutting, sizing, polishing so as to produce marketable tiles constitutes "manufacturing" an article.

10. Now, we may revert back to the facts of the captioned appeals. On consideration of the principles stated above and, the different steps of manufacturing through which the raw materials i.e. wire rods are processed, we are of the considered opinion that, wire so manufactured can no longer be regarded as the original commodity. Infact, the final product is recognized in the trade as a new and distinct commodity. Ostensibly, the wire rod having undergone various mechanized and chemical based processes like annealing, galvanizing etc. results into manufacture of wire with distinct name, character and use. The name of the raw material, originally is wire rod before processing and after processing, it becomes wire of different types, say paper/enamel insulated wires or strips or barbed wire, GSS/Stay Earth wire, chainlink, etc. Therefore, it is commercially distinct commodity with a distinct name. The wires so produced are used for power cables, industrial control cables, electric motors, transformers, etc. but wire rod as a raw material cannot be used as such. Therefore, a new and distinct commodity is manufactured and produced by the assessee namely wire. Infact, in Union of India and Others v. J.G. Glass Industries Ltd. and Others (1998) 2 SCC 32, the Hon'ble Supreme Court had

laid down a two-fold test for determining whether a particular process amounts to 'manufacture' or not ? 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 would not serve the desired purpose but for the said process. Applying this two-fold test to the fact situation of the appellants, it is irresistible to hold that the process undertaken by the appellants amount to manufacture.

11. Infact, Hon'ble Madras High Court's decision in the case of Tamil Nadu Heat Treatment & Fetting Services (P) Ltd. (supra) supports the case of the appellant. In this case, the assessee was receiving un-treated crankshafts, forgings and castings from its clients and was subjecting them to heat treatment to toughen them up for being used as automobile spare parts. The said activity was held to be a manufacturing activity by the Hon'ble High Court. The Hon'ble Madras High Court held as under:

> *"12. In the backdrop and setting of the principles, as enunciated by the Supreme Court and various High Courts as relatable to the activity of "manufacture" of "processing of goods" and in the light of the various literature and books of foreign authors, relatable to the qualitative change having been brought about by well termed process, as referred to above, we may now proceed to consider and decide the moot question as to whether the activities carried on by the assessee namely, receiving untreated crankshafts and forgings and castings from its clients and subjecting them to heat treatment to toughen them up for being used as automobile spare parts can ever the construed as activities relatable to manufacture and, consequently enable it to claim investment allowance under s. 32A of the IT Act."*
>
> *"13. We have to take note of the fact that the process of heat treatment to crankshaft, etc. were absolutely essential for rendering in marketable. Automobile parts as crankshafts, need to be subjected to heat treatment to increase the wear and tear resistance to remove the inordinate stress and increase tensile strength. The raw untreated crankshafts and the like can never by used in an automobile industry. Thus, in the crankshafts subjected to the process of heat treatment etc., a qualitative change is effected, to be fit for use in automobiles, although there is no physical change in them. In such state of affairs, it cannot at all the stated that the crankshafts, subjected to heat treatment, etc. cannot at all change the status of new products of different quality for a different quality for a different purpose altogether. In this view of the matter, we are of the view that the activities of the assessee in relation to raw or untreated crankshafts being subjected to heat treatment, etc., is definitely a "manufacturing activity" entitling it to claim "investment allowance" under s. 32A of the I. T. Act. We answer questions No. 2 and 3 according." [underlined for emphasis by us]*

12. From perusal of the said judgement, it is evident that even qualitative changes effected in the raw material through heating, also amounts to a 'manufacturing activity'. The aforesaid view has also been followed by the Ahmedabad Bench of the Tribunal in the case of Anil Steel Traders (supra) to hold that the activity of annealing of steel rods and coils as per the customer specifications, amounts to 'manufacture'. Thus, in light of the aforesaid judgements alone, we do not find any justification in the stand of the Revenue that the assessee did not carry out any activity of manufacturing. Undoubtedly, the process undertaken by the assessee results in qualitative change in the inputs initially use d in the process of manufacturing. The argument of the Revenue, as manifested in the assessment orders, is that, the activity does not bestow any physical change in the article to which the heat treatment was given by the assessee. In our vie w, considered in the light of the judgement of the Hon'ble Madras High C ourt, which again has referred to various case laws on the issue, the aforesaid argument of the Revenue is not sustained.

13. Further, even if the test of marketability is applied to the facts of the case of the appellants, the process carried out by them constitutes manufacture, as enunciated by the Hon'ble Rajasthan High Court in the case of Arihant Tiles and Marbles (P) Lt d v I TO (supra) following the judgement of the Hon'ble Supreme Court i n t he case of Sesa Goa Ltd. (supra) and, Kores India (supra), since the original commodity, namely, wire rod could not be used for transformers, power cables, etc. as such, until it is drawn into enameled/insulated wires. It is only by this process that, input is made marketable as a distinct commodity and, therefore we hold, in the facts and, circumstances of the case, the process undertaken by the appellants amounts to manufacture of thing or article within the meaning of section 80IC of the Act.

14. In any case, the process amounts to production, as interpreted by the Hon'ble Supreme Court in the case of Sesa Goa Ltd. (supra) wherein it has been held that, the word "production" has been used in a very wide sense to mean to bring out a new product, may be not a commercially new product. In this case, undisputedly and, irrefutably new product has been produced as a result of the various processes undertaken by the appellant and, as such, even on this ground, the appellants are eligible for claim of deduction u/s 80IC of the Act."

15. In ***CIT vs. M/s Doon Valley Rubber Industries ITA No. 2 of 2009*** decided on 6.11.2013 this Court has taken into consideration all the relevant judgments to hold that the rubber crumb produced by the assessee therein was commercially different from its raw material and further held that it was commercially known to be different in the market. This Court proceeded to hold as under:

> ***"5. The question as to what amounts to manufacture is no more resintegra. The three Judges Bench of the Apex Court in the case of Aspinwall and Co. Ltd. v. Commissioner of Income Tax, 2001 (251) ITR 323, has expounded thus:***
>
> > ***….."The word "manufacture" has not been defined in the Act. In the absence of a definition of the word "manufacture" it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to a manufacturing activity."***
>
> ***6. In the latest decision of the Apex court in the case of Income Tax Officer vrs. Arihant Tiles and Marbles P. Ltd., (2010) 320 ITR 79 (SC) after analyzing its earlier decisions and including in the case of Aman Marble Industries P. Ltd. vrs. Collector of Central Excise, (2003) 157 ELT 393 (SC) it has been noted that the expression used in Section 80IA - which is analogous to the expression used in Section 801B, which uses words manufactures or produces, as applicable to the present case – mandates the Court to consider not only word "manufacture" but also the connotation of word "production". Having noted this position, the Court went on to observe that the said expressions have wider meaning as compared to the word "manufacture". Further, the word "production", means manufacture plus something in addition thereto. The Court also noticed the exposition in CIT vrs. Sesa Goa Ltd.(2004) 271 ITR 331 (SC) wherein it has been held that while every manufacture can constitute production, every production did not amount to manufacture. Further, the test for determining whether manufacture can be said to have taken place is whether***

> ***the commodity, which is subjected to a process, can no longer be regarded as original commodity, but is recognized in trade as a new and distinct commodity. Further, the word "production", when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. The word "production" takes in all the by-products, intermediate products and residual products, which emerge in the course of manufacture of goods."***

16. The word 'manufacture' and 'processing' came up for consideration before the Hon'ble Supreme Court in its recent judgment in ***Mamta Surgical Cotton Industries, Rajasthan vs. Assistant Commissioner (Anti-Evasion), Bhilwara, Rajasthan (2014) 4 SCC 87***. Though in that case the Hon'ble Supreme Court was dealing with an entirely different Act and the word 'manufacture' therein was in no manner pari materia with the term 'manufacture', now introduced in the Income Tax Act, how even the judgment assumes importance as it has dealt with the word 'manufacture' and 'processing' in detail alongwith relevant case law and held as under:

> ***"13. It is, therefore, relevant to notice the definition of 'manufacture' as defined in the dictionary clause of the Act. Section 2(27) of the Act defines the expression 'manufacture' as under:***
>
> > ***"2.(27) "manufacture" includes every processing of goods which bring into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government."***
>
> ***The definition aforesaid is an inclusive definition and therefore would encompass all processing of goods which would produce new commodity which is commercially different and distinctly identifiable from the original goods. The definition however excludes all such mechanisms of processing of goods which have been notified by the State Government to the said effect. Admittedly, no such exclusion in respect of the process in analysis for surgical cotton has been notified by the State Government. Therefore, the process of transformation has to be tested on the anvil of proposition whether surgical cotton is processed such that it is commercially different and distinctly identifiable than cotton.***

14. The essential test for determining whether a process is manufacture or not has been the analysis of the end product of such process in contradistinction with the original raw material. In 1906, Darling, J. had subtly explained the quintessence of the expression "manufacture" in McNichol and Anor v. Pinch, [1906] 2 KB 352 as under:

> ***"…I think the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made."***

15. In order to understand the finer connotation of the expression 'manufacture', it may be useful to refer to the decision of this Court in the case of Empire Industries Limited and Ors. v. Union of India and Ors.,(1985) 2 SCC 314, wherein this Court after exhaustively noticing the views of the Indian Courts, Privy Council and this Court had stated as under: (SCC p.329, para 24)

> ***"24. …..'14. ……..'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. '*"***

(CCE v. Osnar Chemical (P) Ltd., (2012) 2 SCC 282; Jai Bhagwan Oil & Flour Mills v. Union of India, (2009) 14 SCC 63; Crane Betel Nut Powder Works v. Commr. of Customs & Central Excise, (2007) 4 SCC 155; CIT v. Tara Agencies, (2007) 6 SCC 429; Ujagar Prints (II) v. Union of India, 1986 Supp SCC 652; Saraswati Sugar Mills v. Haryana State Board, (1992) 1 SCC 418; Gramophone Co. of India Ltd. v. Collector of Customs, (2000) 1 SCC 549; CCE v. Rajasthan State Chemical Works, (1991) 4 SCC 473; CCE v. Technoweld Industries, (2003) 11 SCC 798; Metlex (I) (P) Ltd. v. CCE, (2005) 1 SCC 271; Aman Marble Industries (P) Ltd. v. CCE, (2005) 1 SCC 279; Shyam Oil Cake Ltd. v. CCE, (2005) 1 SCC 264; South Bihar Sugar Mills Ltd. v. Union of India, (1968) 3 SCR 21; Laminated Packings (P) Ltd. v. CCE, (1990) 4 SCC 51; Dy. CST v. Coco Fibres, 1992 Supp (1) SCC 290; CST v. Jagannath Cotton Co., (1995) 5 SCC 527; Ashirwad Ispat Udyog v. State Level Committee, (1998) 8 SCC 85; State of Maharashtra v. Mahalaxmi Stores, (2003) 1 SCC 70; Aspinwall & Co. Ltd. v. CIT, (2001) 7 SCC 525; J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. STO, (1965) 1 SCR 900; CCE v. Kiran Spg. Mills, (1988) 2 SCC 348 and Park Leather Industry (P) Ltd. v. State of U.P., (2001) 3 SCC 135).

16. The following observations by the Constitution Bench of this Court in Union of India v. Delhi Cloth & General Mills Co. Ltd., 1963 Supp (1) SCR 586 where the change in the character of raw oil after being refined fell for consideration are also quite apposite: (AIR p.794, para 14)

> ***"14. … The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance.'……"***

17. For determining whether a process is "manufacture" or not, this Court in Union of India v. J.G. Glass Industries Ltd., (1998) 2 SCC 32 has laid down a two-pronged test. Firstly, whether by such process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist and secondly, whether the commodity which was already in existence would serve no purpose but for the said process. In light of the said test it was held that printing on bottles does not amount to manufacture.

18. A Constitution Bench of this Court in Devi Das Gopal Krishnan v. State of Punjab, (1967) 3 SCR 557 observed that if by a process a different identity comes into existence then it can be said to be "manufacture" and therefore, when oil is produced out of the seeds the process certainly transforms raw material into different article for use.

19. In CCE v. S.R. Tissues (P) Ltd., (2005) 6 SCC 310, the issue for consideration was whether the process of unwinding, cutting and slitting to sizes of jumbo rolls into toilet rolls, napkins and facial tissue papers amounted to manufacture. While holding that the said process did not amount to manufacture this Court inter alia, held as under: (SCC p.317, para 12)

> ***"12. … However, the end use of the tissue paper in the jumbo rolls and the end use of the toilet rolls, the table napkins and the facial tissues remains the same, namely, for household or sanitary use. The predominant test in such a case is whether the characteristics of the tissue paper in the jumbo roll enumerated above is different from the characteristics of the tissue paper in the form of table napkin, toilet roll and facial tissue. In the present case, the Tribunal was right in holding that the characteristics of the tissue paper in the jumbo roll are not different from the***

characteristics of the tissue paper, after slitting and cutting, in the table napkins, in the toilet rolls and in the facial tissues." (emphasis supplied)

20. At this stage the discussion of difference between "processing" and "manufacture" holds much relevance to well appreciate the contention canvassed by Shri Giri that the transformation of cotton into surgical cotton would be mere processing and not manufacture.

21. According to Oxford English Dictionary one of the meanings of the word "process" is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result". In Chambers 21st Century Dictionary, the term "process" has been defined as

"Process.- (1) a series of operations performed during manufacture, etc. (2) a series of stages which a product, etc. passes through, resulting in the development or transformation of it."

22. In East Texas Motor Freight Lines v. Frozen Food Express, 351 US 49 the Supreme Court of United States of America has held that the processing of chicken in order to make them marketable but without changing their substantial identity did not turn chicken from agriculture commodities into manufactured commodities.

23. A three-Judge Bench of this Court in Pio Food Packers case (supra) has dealt with the distinction between "manufacture" and "processing". Therein the appeals were filed against the order of the Kerala High Court holding that the turnover of pineapple fruits purchased for preparing pineapple slices for sale in sealed cans is not covered by Section 5- A(1)(a) of the Kerala General Sales Tax Act, 1963. This Court while deciding whether such conversion of pineapple fruit into pineapple slices for sale in sealed cans amounted to manufacture or not has observed as follows: (SCC p. 176, para 5)

"5. …… Commonly, manufacture is the end result of one [or] more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. 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 but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity."

(emphasis supplied)

This Court held that when the pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture. Pineapple retains its character as fruit and whether canned or fresh, it could be put to the same use and utilized in similar fashion.

24. In Sterling Foods case (supra) this Court has observed that processed and frozen shrimps, prawns and lobsters cannot be regarded as commercially distinct commodity from raw shrimps, prawns and lobsters. The aforesaid view has further been adopted and applied by this Court in Shyam Oil Cake Ltd. case (supra) wherein the classification of refined edible oil after refining was under consideration and on similar lines it was held that the process of refining of raw edible vegetable oil did not amount to manufacture.

25. In Aman Marble Industries case (supra), this Court has held that the cutting of marble blocks into smaller pieces would not be a process of manufacture for the reason that no new and distinct commercial product came into existence as the end product still remained the same and thus its original identity continued.

26. This Court in Crane Betel Nut Powder Works case (supra) citing the earlier decision in Brakes India Ltd. v. Supdt. of Central Excise, (1997) 10 SCC 717 wherein the process of drilling, trimming and chamfering was said to amount to "manufacture", has reiterated that if by a process, a change is effected in a product and new characteristic is introduced which facilitates the utility of the new product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product.

27. In Kores India Ltd. v. CCE, (2005) 1 SCC 385 the cutting of duty-paid typewriter/telex ribbons in jumbo rolls into standard predetermined lengths was considered by this Court and it was held that such cutting brought into existence a commercial product

> ***having distinct name, character and use and amounted to "manufacture" and attracted the liability to duty. In Standard Fireworks Industries v. Collector of Central Excise, (1987) 1 SCC 600 this Court held that cutting of steel wires and the treatment of paper is a process for the manufacture of goods in question.***
>
> ***28. In Lal Kunwa Stone Crusher case (supra), the decision relied upon by Shri Giri, this Court has considered that whether on crushing stone boulders into gitti, stone chips and dust different commercial goods emerge so as to amount to manufacture as per the definition of "manufacture" under Section 2(e-1) of the U.P. Sales Tax Act, 1948 and observed that even if gitti, kankar, stone ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, "stone" as under the relevant Entry is wide enough to include the various forms such as gitti, kankar, stone ballast. It is in this light, that the Court had opined that stone gitti, chips, etc. continue to be identifiable with the stone boulders.***

After taking into consideration the entire law on the subject, the Hon'ble Supreme Court has finally concluded as under:

> ***35. It is trite to state that "manufacture" can be said to have taken place only when there is transformation of raw materials into a new and different article having a different identity, characteristic and use. While mere improvement in quality does not amount to manufacture, when the change or a series of changes transform the commodity such that commercially it can no longer be regarded as the original commodity but recognised as a new and distinct article.***

17. In fairness to counsel for the parties, we may place on record that they cited several other reported and unreported decisions. That indeed, indicates their industry. However, we are of the considered opinion that the question to be answered in this appeal can conveniently be answered only with reference to the exposition in the decisions of the Apex Court and the decision of this Court in ***M/s Doon Valley*** (supra), referred to above, for which reason, we are not burdening this judgment

with the other citations pressed into service by the respective counsel, across the Bar.

18. From the perusal of the factual aspects, it is evident that the qualitative changes effected in the raw material by various means like annealing, quenching, acid pickling and flux application, galvanizing and following the zinc hot dip, definitely amounts to manufacture. There is a complete transformation of raw materials into a new and different article having a different identity, characteristic and use. The series of changes transform the commodity into a different commercial commodity whereby it can no longer be regarded as the original commodity but recognised as a new and distinct article.

19. Further, keeping in mind the exposition of law set out above, we have no hesitation in concluding that the Appellate Tribunal was justified in concluding that the paper insulated wires and strips of copper and aluminium being manufactured/processed by the assessees were commercially different from its raw material and further it is commercially known different in the market. In other words, the assessees were engaged in the manufacture of the product and, therefore, were entitled to the deductions claimed under Section 80 IC of the Act. We find no reason to disagree with the said opinion of the Tribunal and the question No.1 is, therefore, answered accordingly against the revenue.

Question No.2:

20. The learned counsel for the revenue has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of ***Technoweld Industries*** (supra), to contend that the case of assessees is fully covered by the ratio laid down in the aforesaid case. We have considered the aforesaid judgment in detail and are of the considered view that the facts

in the aforesaid case were totally different from the facts in the present case. The assessee in that case was engaged in the business of wire drawing from thicker gauge to thinner gauge by cold drawing process and was in fact not engaged in manufacture or production of wire with different chemical/ electrical/mechanical properties and the product was also not made to undergo any process. Further there was no manufacture of new product, this would be clear from the following observations:

> ***"2. In all these appeals, the respondents purchased duty paid wire rods and drew the wire into a thinner gauge. The question is whether by drawing wire into a thinner gauge, manufacture has taken place. The question is whether the wire of the thinner gauge is excisable to duty.***
>
> ***3. This question came to be considered by the Customs, Excise and Gold (Control) Appellate Tribunal. In the case of Vishvaman Industries v. CCE (2001) 127 ELT 155 (Trib) by an order dated 2.11.2000, it was held that the process of drawing wire from wire rods did not amount to manufacture. The Tribunal based its decision on an earlier decision of the Tribunal in the case of Jyoti Engg.Corpn. v. CCE (1989) 42 ELT 100. In Jyoti case, the tariff entry concerned was 26-AA (i-a) which included bars, rods, coils, wires etc. The Tribunal has held that the raw material was a wire rod and the final product was also a wire. It has held that no new product has come into existence and that there was no manufacture. Civil appeals filed against both the aforementioned decisions were dismissed.***
>
> ******* ********** *********
>
> ***7. This Court was also taken through the processes which are undergone by the manufacturer and which have been set out in some of the orders passed by the Commissioner. It was submitted that the raw material is a rod falling under Tariff Item 72.13 and/or 72.15 whereas after processing a distinct and separate marketable product falling under Tariff Item 72.17 has come into existence. It was submitted that the market price of both the products is also different inasmuch as the cost of the raw material was approximately Rs.13,000 per metric ton whereas for the final product the market price was approximately Rs.15,000 per metric ton. It was submitted that under these circumstances, the Court must now hold that the earlier decisions of the Tribunal are not***

correct and that the final product i.e. the wire which is drawn by the cold drawing process is an excisable product.

8. We are unable to agree with the submission. It is to be seen that the initial product was a wire rod. The ultimate product is also a wire. All that is done is that the gauge of the rod is made thinner and the product is finished a little better. In our view the earlier decisions of the Tribunal are correct. There is no manufacture of a new product. Merely because there are two separate entries does not mean that the product becomes excisable. The product becomes excisable only if there is manufacture."

Now, insofar as these cases are concerned, we after taking into consideration the factual and legal aspects while answering question No.1, have already held that the process being carried out by the assessees amounts to manufacture or production and, therefore, the assessees are eligible for deduction under Section 80IC of the Income Tax Act.

Accordingly, this question also stands answered against the revenue.

21. In view of the findings recorded above, we find no merit in these appeals and accordingly, the same are dismissed, so also the pending application(s), if any. The parties are left to bear their own costs. An authenticated copy of this judgment be placed in all the connected files.

(Mansoor Ahmad Mir),
Chief Justice

September 10, 2014
(GR)

(Tarlok Singh Chauhan),
Judge.