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C.A.No. 6159 OF 1995
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
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ITEM NO. 104 COURT NO. 11 SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 6159/1995 @@
AA

U.O.I. & Ors. Appellant (s)

V E R S U S

Ganesh Metal Processors Industries Respondent (s)
(With appln. for stay and with office report)

W I T H

Civil Appeal No. 6163/1995 - (With office report)
Civil Appeal No. 6160/1995 - (With appln. for stay and office report)

Date : 13/11/2002 These appeals were called on for hearing today.

C O R A M :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Ms. Nisha Bagchi, Adv.
Mr. K.C.Kaushik, Adv.
Mr. B.Krishna Prasad, Adv.

For Respondent (s) Mr. Ramesh Singh, Adv.
Mr. P.S.Sudheer, Adv.
Mr. K.J.John, Adv.

U P O N hearing counsel the Court made the following
O R D E R

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.SP2

Ms. Nisha Bagchi, learned counsel started her arguments at 2.10 p.m. and concluded at 2.45 p.m. Thereafter, Mr. Ramesh Singh, learned counsel started his arguments and concluded at 2.55 p.m.

Hearing concluded.

The civil appeals are disposed of in terms of the signed order. There shall be no order as to costs.

.SP1 Anita (Jasbir Singh)
Court Master

(Signed order is placed on the file.)

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IN THE SUPREME COURT OF INDIA@@
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CIVIL APPELLATE JURISDICTION@@

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CIVIL APPEAL NO. 6159 OF 1995@@
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U.O.I. & Ors. ...Appellant(s)

versus

Ganesh Metal Processors Inds. ...Respondent(s)

WITH

Civil Appeal Nos. 6163 and 6160 of 1995@@
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O R D E R@@
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These appeals are against the order dated 8.9.1994 passed by the High Court of Andhra Pradesh at Hyderabad. The question involved in these appeals is whether the respondents were entitled to the benefit of Notification No. 1 of 1993 dated 28th February, 1993. By the said Notification, exemption is granted to first clearance of specified goods upto a particular value, provided in the previous year, there has been no clearance of goods beyond the aggregate value of Rs. 200 lakhs. Further qualification which is relevant for our purpose, reads as follows:-

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"For the purposes of computing the aggregate value of clearances under this notification, the clearances of any excisable goods, which are chargeable to nil rate of duty or, which are exempted from the whole of duty of excise leviable thereon by any other notification (not being a notification where exemption from the whole of ...2/-

- 2 -

duty of excise leviable thereon is granted based upon the value or quantity of clearances made in a financial year) issued under sub-rule (1) of rule 8 of the said Rules or sub-section (1) of section 5A of the said Act, shall not be taken into account."

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Thus, for the purposes of computing the aggregate value of clearances, the only goods which are not to be taken into account are those (a) which are chargeable to nil rate of duty and (b) which are exempted from whole of the duty of excise leviable under any other Notification. Admittedly the goods are not those which were chargeable to nil rate of duty. The question before this court is whether the goods of the respondents are exempted from whole of the excise duty by

virtue of Notification No.202 of 1988.

The relevant portion of Notification No.202 of 1988 reads as follows:-

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"Exemption to certain final products of iron and steel made from specified input materials and falling under Chapter 72 or 73 or heading 84.54 - In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 90/88-Central Excises, dated the 1st March, 1988, the Central Government hereby exempts goods of the description specified in column (3) of the Table hereto annexed (such goods being hereinafter referred to as "final products") and falling within Chapter 72, Chapter 73 or heading No. 84.54 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule:

...3/-

Provided that such final products are made from any goods of the description specified in the corresponding entry in column (2) of the said Table (such goods being hereinafter referred to as "inputs") and falling within the Chapter 72 or Chapter 73 of the said Schedule or which the duty of excise leviable under the said Schedule or the additional duty leviable under the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has already been paid:

Provided further that no credit of the duty paid on the inputs has been taken under rule 56A or rule 57A of the said rules.

Explanation. - For the purposes of this notification, all stocks of inputs in the country, except such stocks as are clearly recognisable as being non-duty paid, shall be deemed to be the inputs on which duty has already been paid."

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At this stage, two admitted facts need to be set out viz. (a) the goods fall under Serial No.2A of the Table to the Notification No.202 and (b) the respondents had taken credit under rule 57A and had not paid duty on those goods.

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As the respondents had taken credit and not paid duty, the Department held that the respondents were not entitled to exemption of Notification No.202 of 1988. It was held that their clearances were over Rs. 200 lakhs in the preceding year and thus the respondents were not entitled to benefit of Notification No.I of 1993.

All the respondents filed writ petitions which have been disposed of by the common impugned order. In the writ

