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**(2006) 05 AHC CK 0258**

**Allahabad High Court**

**Case No:** Central Excise Appeal No. 30 of 2005

Commissioner, Cus. and C. Ex.

APPELLANT

Vs

J.S. Gupta and Sons

RESPONDENT

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**Date of Decision:** May 17, 2006

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35G(1)

**Citation:** (2006) 201 ELT 174

**Hon'ble Judges:** Sushil Harkauli, J; Rajesh Kumar, J

**Bench:** Division Bench

**Advocate:** Pankaj Bhatia, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. We have heard the learned Counsel for the appellant and Sri Pankaj Bhatia, appearing for the respondents.
2. This appeal u/s 35G(1) of the Central Excise Act, 1944 has been preferred by the Commissioner, Custom and Central Excise, Meerut-II against the Order of Customs, Excise and Service Tax Appellate Tribunal dated 17-12-2004. The appeal has not been admitted so far.
3. The relevant facts are that the respondent had been granted the status of 100 percent E.O.U. (Export Oriented Unit). This grant of status has not been cancelled or taken away, so far. Upon grant of such status the unit gets right/facility to obtain raw material free of duty.
4. The Central Board of Excise and Custom has issued a circular and drawing upon the power conferred by the said circular, the Commissioner, Central Excise has passed an Order suspending the said right/facility of the respondent of procuring duty free raw material.

5. The Tribunal has held that the right of procuring duty free raw material flows, by virtue of law, to 100 per cent E.O.U. and that right can be taken away either by canceling the 100 per cent E.O.U. status or by an Order authorized by the same law which has granted that right. The right of procuring duty free raw material has not been granted by C.B.E.C. (Central Board of Excise and Customs) or by the Commissioner, Central Excise and therefore neither of these two authorities can, either by circular or by order, take away that right.

6. We do not find any error in the said reasoning of the Tribunal.

7. The vehement arguments raised by the learned Counsel for the appellant describing the alleged misconduct of the respondent are irrelevant and cannot justify either the Order of the Commissioner or Circular of C.B.E.C. If the respondent has failed to meet the requirements of 100 per cent E.O.U., action for canceling the said status may be taken, if permissible. But without taking away that status, the benefits flowing from that status cannot be taken away unless there is such a power conferred by a provision in that very law which confers the said benefits.

8. In view of the above, we dismiss the appeal on being without merits.