

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(s). 4981 OF 2007

M/S HOTEL LEELA VENTURE LTD.

Appellant (s)

VERSUS

COMMR.OF CUSTOMS(GEN) MUMBAI

Respondent(s)

(With appln(s) for stay and prayer for interim relief & office report)

Date: 22/01/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s) Mr. S.K. Bagaria, Sr.Adv.

Mr. Tarun Gulati, Adv.

Mr. Rony John, Adv.

Mr. Praveen Kumar,Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr.Adv.

Mr. H. Raghavendra Rao, Adv.

Mr. D.D. Kamath, Adv.

Ms. Anil Katiyar, Adv.

Mr. B. Krishna Prasad,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed with no order as to costs.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4981 OF 2007

M/S HOTEL LEELA VENTURE LTD.

...APPELLANT (S)

VERSUS

COMMR. OF CUSTOMS (GEN.) MUMBAI

...RESPONDENT(S)

ORDER

Appellant is an importer. Appellant claims exemption under Notification No. 30/88 dated 1st March, 1988 saying that items imported were “heat pumps” for space heating, water heating and cooling applications. He placed reliance on the Table annexed to the above Notification and claims exemption/concessional rate of duty on 160 imported items.

At the very outset, it may be stated that this Civil Appeal is against a concurrent findings. We may also add that the matter is highly technical. In this Civil Appeal when we went through the judgment of the Tribunal, which is impugned judgment herein, we find that there is a categorical finding recorded to the effect “that the Operational Manual of the manufacturer for the said 160 Items describe them as air-conditioner and not heat pumps”. To be precise, the words used in the Operational Manual were “it is a heat pump type air conditioner”. The Operational

Manual produced by the appellant is titled as “Air Cooled Split System Air Conditioner”. What is important to note is that in this case appellant is claiming the benefit of an Exemption Notification. The burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense. In this case the appellant had led evidence of an expert, twice. It appears that the Operational Manual was not placed before him. No questions were asked to the expert on the terminology used in the Manual which described the imported items as “Heat Pump Type Air Conditioner”. Therefore, on the facts and circumstances of the case, we do not see any reason to interfere with the concurrent findings recorded by the authorities below.

However, we make it clear that on principle this judgment does not settle the law and our reasoning is based only on the facts and circumstances of this case, namely, that the appellant had failed to discharge burden placed on it while claiming the benefit of Exemption Notification.

Subject to what is stated above, this Civil Appeal is dismissed with no order as to costs.

**.....J.
[S.H. KAPADIA]**

**New Delhi,
January 22, 2009**

**.....J
[AFTAB ALAM]**