

SUPREME COURT OF INDIA

Hotel Leela Venture Ltd.

Vs.

Commr.Of Customs(Gen) Mumbai

C.A.Nos. 4981 of 2007

(S.H. Kapadia and Aftab Alam JJ.)

22.01.2009

ORDER

1. The appeal is dismissed with no order as to costs.
2. The signed order is placed on the file.
3. 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.
4. 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.
5. 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.

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