

**Hind Metals Vs. Commissioner of Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/19522](http://sooperkanoon.com/19522)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-24-2000

**Reported in :** (2001)(127)ELT822TriDel

**Appellant :** Hind Metals

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The appellants filed this appeal against the order-in-appeal dated 18-11-99 passed by the Commissioner (Appeals) whereby the benefit of modvat credit was denied to the appellants.

2. Ld. Counsel, appearing on behalf of the appellants, submits that in this case show cause notice was issued to the appellants for denying the benefit of modvat credit in terms of Rule 57H(1)(b) of Central Excise Rules on the ground that the assessee has not explained as to how much quantity of inputs, for which the claim was lodged, was used in the manufacture of final product cleared on payment of duty and how much quantity of input is under process. He submits that in spite of these allegations in the show cause notice, the Commissioner (Appeals) in the impugned order denied the benefit totally on different grounds such as the invoice, in question, did not contain the particulars of rate of duty, etc. and no declaration under Rule 57G of Central Excise Rules was filed. He submits that in these circumstances, the impugned order is beyond the scope of show cause notice.

3. Heard Id. D.R., who reiterated the findings of the lower authorities.

4. In this case the show cause notice was issued for denying the benefit of modvat credit for the period from 4-7-1994 to 19-12-1994 on the ground that the appellants had not furnished full particulars while seeking permission in terms of Rule 57H(1)(b) of Central Excise Rules.

The relevant portion of the show cause notice is reproduced below : "Moreover, the party have not furnished the information in terms of Rule 57-H(1)(b) of Central Excise Rules, 1944 to the satisfaction of the Assistant Collector as to how much quantity of inputs, for which the claim was lodged was used in the manufacture of the final products cleared on payment of duty and how much quantity of inputs is under process and how much quantity of inputs is still lying unused. In view of the above, the request of the party for relief under Rule 57-H(1) as amended is not acceptable. Therefore, relief of credit of Rs. 1,19,039.00 is not allowable to the party. However, the party have taken Modvat Credit of Rs. 1,19,039.00 in their RG 23-A Part-II on 7-12-1994 without permission from the competent authority. Therefore, Modvat Credit of Rs. 1,19,039.00 is recoverable from the party under Rule 57-I of Central Excise Rules, 1944." 5. The Commissioner (Appeals), in the impugned order, held that the appellants availed the benefit of modvat credit on the strength of invoices, which do not contain the particulars, such as, rate of duty, etc. required under Notification 15/94. The Commissioner (Appeals) also held that no declaration, under Rule 57G of Central Excise Rules, was filed.

6. In the show cause notice, there is no allegation for denying the benefit of Modvat credit on the ground that no declaration was filed.

The show cause notice was issued on the basis of necessary particulars in respect of inputs lying in stock, used in the final products, cleared on payment of duty and inputs used in the final produce, which is under process, whereas the impugned order is passed entirely on different considerations. Therefore, the impugned order is passed beyond the scope of show cause notice and is set aside and the appeal is allowed.