

**Aman Engineering Works Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/33500](http://sooperkanoon.com/33500)

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

**Decided On :** Dec-18-2003

**Judge :** A T V.K., P Bajaj

**Appellant :** Aman Engineering Works

**Respondent :** Cce

**Judgement :**

1. The issues involved in this Appeal Filed by M/s. Aman Engineering.

Works are whether MODVAT credit of the duty paid on inputs is available to them and whether the demand is barred by time limit specified in Rule 57 I of the Central Excise Rules, 1944.

2. Shri K.K. Anand, learned Advocate, submitted that the Appellants manufacture water meters and avail MODVAT credit of the duty paid on inputs; that they had availed the MODVAT credit of the duty paid on imported brass scrap on the strength of one invoice No. 56 dated 26.12.97 issued by M/s. Shobhit Impex who were importers and registered dealers authorized to issue modvatable invoices; that the MODVAT credit has been disallowed to them on the ground that they have only received the invoice without receipt of the goods. He, further, submitted that the entire demand is hit by bar of limitation as they had submitted copies of invoices along with RT 12 returns; that no allegation of fraud suppression of facts etc. with an intent to evade payment of duty was mentioned in the show cause notice; that in absence of any such allegation in the show cause notice, extended

period of limitation can not be invoked. He relied upon the decision in the case of CCE Vs. HMM Ltd, 2002-Taxindiaonline-120-SC-CX. Finally, he mentioned that in the case of M/s. Leader Engineering Works Vs. CCE Jalandhar and M/s. V.K.Valve (P) Ltd. Vs. CCE Jalandhar which had also arisen out of the impugned order passed by the Commissioner, Tribunal vide Final Order Nos. A-622/2003-NB(S) dated 24.6.01 and 795/03-B dated 7.10.03 respectively, has held that there is no whisper in the show cause notice regarding the invocability of extended period of limitation therefore, no duty demand can be confirmed against them after expiry of statutory period.

3. Countering the arguments Shri V. Valte, learned Senior Departmental Representative, submitted that the show cause notice has been issued to a number of assessees only on the ground that the inputs were not received and they had taken the MODVAT credit only on the basis of invoice; that these facts clearly show that the MODVAT credit has been taken by them fraudulently and as such extended period is invoikable.

4. We have considered the submissions of both the side. Learned Advocate for the Appellant has rightly mentioned that this Tribunal has already decided two appeals arising out of the impugned order itself filed by M/s. Leader Engineering Works and M/s. V.K. Walves Pvt. Ltd. Both of these appeals had been allowed on the aspect of time limit alone after relying upon the decision of the Supreme Court in HMM Ltd. wherein it has been held that "in order to attract the provisions of Section 11 A(1), it must be alleged in the show cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful mis-statement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the ct Rules made thereunder with intent to payment of duty by such person or his agent." The Supreme court has further observed that "in absence of any such allegation in the show cause notice, the assessee was not put to notice regarding specific allegation under the proviso to that sub-section .... unless the assessee is put to notice, the assessee has no opportunity to meet the case of the Department." Thus, following the earlier two decisions by the tribunal in respect of the present impugned order itself, we allow the Appeal on the aspect of time limit without going into the merits of the case.

