

**E.C.E. Industries Vs. Collector of Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/13302](http://sooperkanoon.com/13302)

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

**Decided On :** Apr-21-1998

**Reported in :** (1998)(62)ECC245

**Appellant :** E.C.E. Industries

**Respondent :** Collector of Central Excise

**Judgement :**

The appellants herein are manufacturers of Glass Electric Bulbs. For the purpose of manufacturing the same, they also manufacture 'stems' which are used as a part of the electric bulb. They were not paying duty on 'stems' inasmuch as most of the manufacture of their bulbs that is, 60 Watts and above, were dutiable. However those 'stems' were also used in manufacture of bulbs of less than 60 Watts. Since the bulbs of less than 60 Watts are exempted from duty, the appellants could not avail of the exemption under Notification No. 217/86-C.E. The stems manufactured by them as a part of the bulbs of less than 60 Watts were therefore, liable to pay duty. This aspect of dutiability of stems used in manufacture of electric bulbs of less than 60 Watts is not denied by the appellants. They have however, urged that with the department's findings to charge duty on stems to the tune of Rs. 24,31,025.80 for the period 1-3-1986 to December, 1989, as confirmed by the Adjudicating Authority in the main order, they would be entitled to the benefit of Modvat credit of duty paid on inputs used in manufacture of stems.

2. Ld. Advocate Shri R. Nambirajan submits that this was one of the pleas duly taken up by the appellant but the adjudicating authority has not dealt with the same in the impugned order. He also draws our attention to page 45 of the paper book which indicates that after the visit of Central Excise Officers and on detection of this case, they have already reversed Modvat credit of duty paid on inputs used in such stems to the tune of Rs. 26,51,527.25. Ld. Advocate, therefore, submits if the duty of Rs. 24 Lakhs and odd as mentioned above is to be recovered from them, they should be given the Modvat credit to the tune of Rs. 26 Lakhs and odd as mentioned above. For this proposition Id. Advocate relies upon Apex Court judgment in the case of Formica India Ltd. v. CCE reported in 1995 (77) E.L.T. 511 (S.C.). He submits that procedural formalities have also been fulfilled in this case inasmuch as they reversed the Modvat credit every month since they were manufacturing dutiable glass electrical bulbs as well as non-dutiable ones and the inputs were common in some of them.

3. We have also heard the Id. SDR Shri A.K. Aggarwal. The plea taken by the Id. Advocate Shri R. Nambirajan for the appellant, as mentioned above, has substantial force in view of the judgment of the Apex Court.

If the department charges the duty, as confirmed as Rs. 24,31,025.80 for the period 1-3-1986 onwards, on stems manufactured and utilised in manufacture of bulbs of less than 60 Watts, then the appellant would also be entitled to the Modvat credit of duty paid on inputs utilised in manufacture of such stems. We, therefore, direct the Adjudicating Authority to verify the said amount which according to the appellant is to the tune of Rs. 26,51,527.25. After adjusting Modvat credit admissible to them in terms of aforesaid finding, the balance amount of duty, if any, leviable on the appellant will be payable by the appellant. On the question of penalty, we are of the view that considering overall facts and circumstances of this case imposition of penalty is not warranted. We order accordingly. Appeal disposed of in the above manner.