

CASE NO.:
Appeal (civil) 737 of 1995

PETITIONER:
STANDARD PENCILS (P) LTD. ETC. ETC.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, MADRAS

DATE OF JUDGMENT: 19/09/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. VARIAVA

JUDGMENT:
JUDGMENT

2002 Supp(2) SCR 509

The following Order of the Court was delivered :

Civil Appeal No. 737 of 1995:

The short but interesting question that arises in this appeal filed by the Manufacturer-assessee from Order No. 146/1993-C in Appeal No. E/2543/92-c of the Customs, Excise and Gold (Control) Appellate Tribunal dated 30th April, 1993, is: whether 'Kum-Kum Pencil' is entitled to the benefit of Notification No. 235/1986-CE dated 3rd April, 1986.

The assessee manufactures Kum Kum pencil. Notice dated 13th March, 1991 was issued to the assessee by the Assistant Collector of Central Excise, V-Division, Madras to show cause as to why 'Kum-Kum Pencil' should not be classified under Heading 3304.00 of the Central Excise Tariff Act, 1985. The question that fell for consideration was whether Kum-Kum pencil and eyebrow pencil are one and the same goods classifiable under Heading 3304.00 or different goods. Both the Assistant Collector and the Collector (Appeals) have held that Kum-Kum Pencil is different and classifiable under Heading 3307.00 of the Central Excise Tariff Act, 1985. But that gave rise to the next question whether kum-kum pencil would really fall within the meaning of 'Kum-Kum. On that point also, the original authority and the appellate authority found that Kum-Kum Pencil is one of the form of Kum-Kum' and, therefore, it is entitled to the benefit of Notification No. 235/1986-CE. However, the Customs, Excise and Gold (Control) Appellate Tribunal (for short, 'the Tribunal'), on appeal by the Revenue, held that Kum-Kum in powder form, in liquid form or in sticker form could be treated as 'Kum-Kum' in common parlance. It declined to take Kum-Kum, in pencil form, as falling under the exemption granted by the Notification No. 235/1986-C.E. That view is assailed in this appeal.

Notification 235/1986-CE, as amended by Notification No. 323/1986-C.E. dated 22.5.1986, No. 12/1987-C.E. dated 23.1.1987 and No. 48/1988-C.E. dated 1.3.1988, reads as under :

"Exemption to Kum Kum and kajal-In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in column (2) of the Table hereto annexed and falling under sub-heading No. 3307.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise leviable thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) thereof.

TABLE SI. No.
Rate of duty

Description of goods

(1)	(2)	(9)
1.	KumKum	Nil
2.		Kajal
Nil		
3.		Sindur
Nil		
4.		Alta and Mahavar
Nil		

Indeed, the notification proceeds on the footing that Kum Kum and four other goods fall under Sub-Heading 3307.90.

From a reading of the order of the Collector (Appeals), it is clear that Kum Kum is available in four different forms in the market. It is also on record that it is being used by the ladies/girls to make a mark "bindi" on the forehead. If this be so, it is difficult to appreciate the reasoning of the Tribunal that though the powder form, liquid form and the sticker form would fall within the meaning of 'Kum Kum' and not the pencil form of Kum Kum. When 'Kum Kum' in all the said four forms is available in the market and the Central Government in the notification in question has not confined the benefit of the said notification to a particular form or forms, there seems to be no valid reason to exclude 'Kum-Kum' in pencil form from the benefit of the notification. As a general word, 'Kum-Kum' is used in the notification, it will take in all the forms of 'Kum-Kum'.

In this view of the matter, we set aside the order of the Tribunal and restore that of the Collector (Appeals).

The civil appeal is, accordingly, allowed.

No. costs.

Civil Appeal No. 10232 of 1996:

In view of the order passed in Civil Appeal No. 737 of 1995, this appeal is also allowed.

No. costs.