

**SUPREME COURT OF INDIA**

Standard Pencils (P) Ltd.

Vs.

Collector of Central Excise, Madras

C.A.No.737 of 1995

(Syed Shah Mohammed Quadri and S.N.Variava JJ.)

19.9.2002

**ORDER**

**S.N. Variava, J.**

1. 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. 235/1998-CE dated 3rd April, 1986.

2. 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 eye-brow 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 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. 235/1998-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.

3. 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.

Sl. No.	Description of goods	Rate of duty	of (1)	(2)	(3)
1.	Kum Kum	Nil			
2.	Kajal	Nil			
3.	Sindur	Nil			
4.	Alta and Mahavar	Nil			

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

5. 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 power form, liquid form and the sticker form would fall within the meaning of `Kum Kum' and not the pencil form/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 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'.

6. 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:*

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

Appeals allowed.