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STANDARD PENCILS ( P ) LTD . ETC. ETC.  
V.  
COLLECTOR OF CENTRAL EXCISE , MADRAS

A

SEPTEMBER 19 , 2002

[ SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA , JJ . ]

B

Central Excise Tariff Act , 1985 :

Schedule Sub - heading 3307.90 -- Kum - Kum pencil - Levy of excise duty - Exemption from - Revenue classifying Kum - Kum pencil under Sub heading 3304.00 - Assessee - manufacturer contending that Kum - Kum pencil being a form of Kum - Kum was classifiable under sub - heading 3307.90 and was exempt from excise duty under exemption Notification No. 235 / 1986 - CE dated 3.4.1986 as amended from time to time - Held , Kum - Kum in powder form , liquid form , sticker form falls within the meaning ' Kum - Kum — Kum- Kum in pencil form along with other three forms is also available in the market and when the Central Government in the Notification has not confined the benefit to a particular form or forms , there is no reason to exclude Kum Kum in pencil form from the benefit - As a general word ' Kum- Kum ' is used in the Notification , it will take in all the forms of ' Kum - Kum ' - As held by the Collector ( Appeals ) , Kum - Kum pencil is one of the form of ' Kum - Kum and is entitled to benefit of Notification No.235 / 1986CE .

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 737 of 1995 .

From the Judgment and Order dated 30.4.1993 of the Central Excise Customs and Gold ( Control ) Appellate Tribunal , New Delhi in E / A . No. 2543 of 92 - C in F.O. No. 146 of 1993 - C .

WITH

C.A. No. 10232 of 1996 .

V. Lakshmikumar , A.R. Madhav Rao , Alok Yadav and V. Balachandran , C for the Appellants .

Soli J. Sorabjee , Attorney General , Rajiv Nanda and B. Krishna Prasad , for the Respondent .

The following Order of the Court was delivered :  
509

H

A 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 of the Customs , Excise and Gold ( Control ) Appellate Tribunal dated 30th April , 1993 , is : whether ' Kum - Kum Pencil ' is entitled to the benefit of B 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 C 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 D 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 E 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 .

F Notification 235 / 1986 - CE , as amended by Notification No. 323 / 1986 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 Government hereby exempts goods of the description specified in G 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 H calculated at the rate specified in the corresponding entry in column ( 3 ) thereof .

Description of goods Rate of duty

( 2 ) ( 9 )

Kum Kum Nil B

Kajal Nil

Sindur Nil

Alta and Mahavar Nil

notification proceeds on the footing that Kum Kum and four under Sub - Heading 3