

# Physician samples attract excise: SC

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Drugs manufacturers will now have to pay appropriate excise duty on promotional samples supplied to doctors, the Supreme Court has ruled.

"Excise duty is payable even in case of free supply since sale is not a necessary condition for charging duty under the act (Central Excise Act, 1944)," a bench comprising Justice DK Jain and Justice HL Dattu said in its judgement.

The court dismissed two appeals of Medley Pharmaceuticals which had said that physician samples were not excisable goods because they were statutorily prohibited from being sold under the Drugs and Cosmetics Act

1940 and Rule 65 (18) of the Drugs Rules.

The bench argued that the companies made the products for selling them in the market and then chose to give away some units as free samples;

they were simply advertising their goods, it was their choice.

"The choice made by them in terms of Rule 96 (1)(ix) of the Drugs Rules by overprinting words "physician's sample— not to be sold" on the la-



## ORDER: ORDER

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bel will not come in the way of the revenue (department) from levying excise duty," the court said.

"It has been shown by research that the market of a pharmaceutical company is enhanced substantially by the distribution of free physician samples; ...their distribution serves as a marketing tool in the hands of the pharmaceutical companies," the court said.

The court, however, allowed a separate appeal of Medley, challenging order of the Customs Excise and Service Tax Appellate Tribunal (CES-TAT) on valuation of physician samples for the purpose of levy of duty. The court remitted the matter to the adjudicating authority, directing it to value such goods on a pro-rata basis for the relevant period.

Misc

31/01/11

Div (M)

18/01/11