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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066**
**EXCISE APPEAL BRANCH**

**Appeal No. :** E/551/2005-EX[DB]

Dated: **25/07/2012**

**Assistant Registrar**
C.E.S.T.A.T. New Delhi
To,
**OPTHO REMEDIES PVT LTD**
28, Monereco Industrial Estate,
Teliarganj, Allahabad

**OPTHO REMEDIES PVT LTD** (Appellant)

**VS**

**C.C.E. KANPUR** (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/855/2012-EX[DB]** dated **19/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

**Assistant Registrar**
**EXCISE Appeal Branch**

**Copy To,**
**1. Respondent**
**C.C.E. KANPUR**
117/7, Sarvodaya Nagar, Kanpur 208005.

**2. Advocate(s) / Consultant(s):**
**Bipin Garg**
B-1/1289,A-Vasant Kunj, New Delhi

**3. C.D.R**
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

**Assistant Registrar**
**EXCISE Appeal Branch**

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**

**NEW DELHI.**

**Date of Hearing/Decision:19.07.2012**

Appeal No.E/551 of 2005-Excise

[Arising out of Order-in-Appeal No.559-CE/Appeal/Kanpur/2004 dated 01.10.2004 passed by the Commissioner of Central Excise (Appeals), Kanpur]

M/s.Optho Remedies — Appellant

Versus

CCE, Kanpur — Respondent

Appearance: Rep. by Ms. Sukriti Das, Advocate for the appellant.
Rep. by Shri R.K. Verma, AR for the respondent.

CORAM : Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Order No. A/857/2012-[illegible] Dated : 19.07.2012

**Per. D.N. Panda**

Ld. Counsel submits that Physician's samples were cleared in accordance with the terms of the Notification No.48/77 dated 1.4.77. Those samples were in a different packing and individual samples were inscribed with "Physicians samples - not to be sold". In such circumstances, both the cumulative requirement of the notification i.e. distinct packing and inscription in the individual container have been fulfilled. Therefore, appellant's prayer is to allow the appeal even though ld. Commissioner (Appeals) reduced the penalty, which was imposed under Rule 173Q of Central Excise Rules, 1944.

2. On the other hand, Revenue's contention is that when the packing had same monograms, colour and design, there cannot be grant of the benefit of aforesaid notification. Therefore, both the authorities below have rightly held against the appellant. Ld. DR vehemently opposes contention of the appellant relying on the decision of Indian Drugs & Pharmaceuticals Limited, Hyderabad Vs. CCE, Hyderabad reported in 1987 (31) ELT 829 (Tribunal).

3. We have perused para-10 of the order of adjudication. The Authority had occasion to examine the samples produced before him. Upon examination, he found that different quantities were packed and the contents were marked with "Physician sample- not to be sold". We have examined such a factual finding with notification requirements relied upon by the appellant. The notification is clear about the container containing contents. That does not speak of any design or colour of the container. Notification confines the test to be applied is whether it is distinctly different from the regular packing. This is not in dispute when the Authority found that there is quantity difference in the containers. Therefore, the first condition is fulfilled. Sofar as the condition of inscription is concerned, it is admitted case of both sides that appropriate inscription appeared. In the case cited by Revenue when there was a minor difference noticeable, Revenue succeeded therein. But this is a case where there is a major difference noticeable for that Revenue shall not gain out of the citations made.

4. In view of the aforesaid facts flowing from the adjudication order, first appellate order is set aside and the appeal is allowed.

[Dictated and pronounced in the open court]

( D.N. Panda )
Judicial Member

( Rakesh Kumar )
Technical Member

Ckp.