



## ***ALO Law Office- IDT Tax | Arbitration | Litigation***

**Date: 04.08.2025**

# **CESTAT Mumbai Clarifies Scope of Section 117 Customs Act in Export Documentation**

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Mumbai, has set aside a penalty of ₹2,00,000/- imposed on M/s Ajanta Pharma Ltd. under Section 117 of the Customs Act, 1962. The case revolved around alleged mis-declaration in Airway Bills for 43 consignments of pharmaceutical products exported between September 2018 and March 2021. This decision highlights the importance of adhering to legal provisions and ensuring due process in penalty imposition.

### **Background of the Case**

Ajanta Pharma Ltd., a prominent pharmaceutical exporter, faced allegations of mis-declaration in Airway Bills, where the goods were described as "medical apparatus" instead of their actual description—Erectile Dysfunction Medicines such as Kamagra Oral Jelly, Super Kamagra Tablets, and Kamagra Gold Tablets. While the shipping bills, invoices, and packing lists contained accurate descriptions, the discrepancy in Airway Bills led the Customs Department to impose a penalty under Section 117 of the Customs Act, 1962.

The penalty was challenged by Ajanta Pharma Ltd., arguing that the alleged contravention pertained to provisions of the Foreign Trade Policy 2015-20, not the Customs Act. The company contended that no violation of the Customs Act was established, making the penalty unsustainable.

### **Key Observations by the Tribunal**

- 1. Scope of Section 117 of the Customs Act:** Section 117 prescribes penalties for contraventions of the Customs Act or its provisions. The Tribunal noted that the alleged mis-declaration pertained to

the Foreign Trade Policy, not the Customs Act. Therefore, the penalty under Section 117 was deemed inapplicable.

2. **Accuracy of Shipping Bills:** The Tribunal emphasized that the shipping bills, invoices, and packing lists submitted by Ajanta Pharma Ltd. contained accurate descriptions of the goods. The discrepancy in Airway Bills, prepared by the freight forwarding agent, did not constitute a violation of the Customs Act.
3. **Due Process and Notice:** Citing the Supreme Court's decision in *M/s Amrit Foods vs. Commissioner of Central Excise, U.P.*, the Tribunal underscored the importance of putting the assessee on notice regarding the exact nature of contravention. Without such notice, the penalty was deemed unsustainable.

## Final Verdict

The Tribunal concluded that no provision of the Customs Act had been violated by Ajanta Pharma Ltd. Consequently, the penalty imposed under Section 117 was set aside, and the appeal was allowed with consequential relief.

## Implications of the Ruling

This judgment reinforces the principle that penalties must be grounded in clear legal provisions and due process. It serves as a reminder to authorities to ensure that allegations are substantiated and aligned with the relevant laws. For exporters, the case highlights the importance of maintaining accuracy in mandatory export documents and addressing discrepancies promptly.

## Conclusion

The CESTAT's decision in favor of Ajanta Pharma Ltd. is a landmark ruling that underscores the importance of legal precision and procedural fairness in penalty imposition. Exporters and stakeholders in the trade industry can draw valuable lessons from this case to safeguard their operations and ensure compliance with applicable laws.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Mumbai**

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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

WEST ZONAL BENCH, MUMBAI

**Customs Appeal No. 87540 of 2022**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AXP-APP-886/2022-23 dated 24.08.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.)

**M/s Ajanta Pharma Ltd.**  
**Ajanta House, 98 Government**  
**Industrial Area, Charkop,**  
**Kandivali (West), Mumbai – 400 067**

.....Appellant

*VERSUS*

**Commissioner of Customs (Air Cargo Export),**  
**Mumbai**  
**Air Cargo Complex, Sahar Andheri (E),**  
**Mumbai, Maharashtra**

.....Respondent

**APPEARANCE:**

Shri N.D. George, Advocate for the Appellant  
Shri Dinesh Nanal, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 86153/2025**

Date of Hearing: 27.06.2025

Date of Decision: 29.07.2025

Imposition and confirmation of penalty of ₹2,00,000/- under Section 117 of the Customs Act, 1962 on the Appellant-Exporter for mis-declaration on the Airway Bills for multiple times in respect of 43 consignments is assailed by the Appellant in this appeal.

2. Briefly stated, facts of the case, as reveals from show-cause notice, is that Appellant had exported pharmaceutical products i.e.

Erectile Dysfunction Medicines namely Kamagra Oral Jelly, Super Kamagra Tablets and Kamagra Gold Tablets between the period 11.09.2018 and 10.03.2021 that covers 43 consignments. Though in the shipping bills, invoices and packing list, correct description of goods were mentioned, in the Airway Bills it is falsely declared as medical apparatus. Airways bills being mandatory document for export of goods as per para 2.06(a) of Chapter 2 of Foreign Trade Policy 2015-20 and Notification dated 12.03.2015 issued by the DGFT, Respondent-Department treated the same as mis-declaration and imposed penalty under Section 117 of the Customs Act, 1962. Appellant is before this Tribunal challenging legality of the said order.

3. I have heard submissions from both the sides and gone through their notes of submission. At the outset, it is to be seen as to for contravention of which provision penalty is prescribed under Section 117 of the Customs Act, 1962. It reads:

***"Section 117 – Penalties for contravention, etc., not expressly mentioned***

*Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakhs rupees."*

*(Underlined to emphasise)*

4. As could be seen from the show-cause notice dated 06.07.2021 and Order-in-Original, only provision of Foreign Trade Policy 2015-20 has been allegedly violated by the freight forwarding agent of the

Appellant, who might have done it at the instance of Appellant but Section, 117 is restricted to imposition of penalties for contravention of provisions of Customs Act only or for its abetment or for failure to comply with the provision of this Act (means of the Customs Act, 1962). No such violation is noticeable here except that learned Commissioner (Appeals) has dragged Sub-Section 3 Clause (b) instead of Clause (a) of Section 50 of the Customs Act (introduced through an Amendment made in 2018) in his order which prescribes for authority and validity of documents instead of ensuring of accuracy and correctness of information in the Bill of Export. Even if it is accepted to be made applicable to the Appellant in the absence of any provision referred in the show-cause notice, there is no mis-declaration made in the shipping bills furnished by the Appellant, since it is admitted by the Respondent that shipping bills invoices etc. were all containing correct description, apart from the fact that in view of decision of the Hon'ble Supreme Court passed in the case of *M/s. Amrit Foods Vs. Commissioner of Central Excise, U.P.* as reported in *2005 (190) ELT 433 (S.C.)*, on which heavy reliance is placed by learned Counsel for the Appellant, that without Assessee being put on notice as to the exact nature of contravention for which it was liable, such penalty is not sustainable.

5. This being facts on record, I am of the considered view that no provision of the Customs Act has been violated nor even alleged to have been violated by the Appellant-Exporter, for which it can be made liable to penalty under Section 117 of the Customs Act, 1962. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-III *vide* Order-in-Appeal No. MUM-CUSTOM-AXP-APP-886/2022-23 dated 24.08.2022 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 29.07.2025)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

*Prasad*