



ALO Law Office- IDT Tax | Arbitration | Litigation

Date: 27.08.2025

CESTAT Bangalore Sets Aside Penalty Under Section 117

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Bangalore, has set aside a penalty imposed under Section 117 of the Customs Act, 1962, on M/s. Nippon Express (India) Private Limited. This decision underscores the importance of adhering to the principles of natural justice and the scope of show-cause notices in adjudication proceedings.

Case Overview

The case arose from an appeal filed by M/s. Nippon Express (India) Private Limited against the imposition of a penalty of Rs. 2,000 under Section 117 of the Customs Act, 1962. The penalty was imposed by the Commissioner of Customs (Appeals), Bangalore, through Order-in-Appeal No. 791/2022 dated 23.03.2022. The appellant contended that the penalty was imposed without prior notice or an opportunity to contest the proposal, violating the principles of natural justice.

Key Arguments

The appellant argued that:

1. The show-cause notice issued to them proposed penalties under Sections 112 and 114AA of the Customs Act, 1962. However, the adjudicating authority imposed a penalty under Section 117, which was not part of the original notice.
2. This action was beyond the scope of the show-cause notice and deprived the appellant of the opportunity to contest the penalty under Section 117.
3. Despite raising this issue before the Commissioner (Appeals), their plea was not considered, and the appeal was rejected.

Tribunal's Observations

- The imposition of a penalty under Section 117 of the Customs Act, 1962, without prior mention in the show-cause notice, was contrary to the principles of natural justice.
- The Tribunal referred to the precedent set by the Hon'ble Supreme Court in the case of *CCE vs. GAIL: 2007-TIOL-250-SC-CX*, which emphasized that penalties or actions beyond the scope of the show-cause notice are unsustainable in law.

Final Decision

The Tribunal concluded that the penalty imposed under Section 117 was beyond the scope of the show-cause notice and violated the principles of natural justice. Consequently, the penalty was set aside, and the appeal was allowed in favor of M/s. Nippon Express (India) Private Limited.

Key Takeaways

This ruling highlights several critical aspects of customs law and adjudication:

1. **Adherence to Show-Cause Notices:** Authorities must strictly adhere to the scope of the show-cause notice. Any deviation can render the penalty or action unsustainable.
2. **Principles of Natural Justice:** Providing an opportunity to contest allegations is a cornerstone of fair adjudication. Any violation of this principle can lead to the annulment of the order.
3. **Judicial Precedents:** The Tribunal's reliance on the Supreme Court's decision in *CCE vs. GAIL* reinforces the importance of established legal principles in adjudication.

Conclusion

The CESTAT Bangalore's decision is a reminder to both authorities and businesses about the importance of procedural fairness in customs adjudication. For businesses, it underscores the need to carefully scrutinize show-cause notices and orders to ensure compliance with legal principles. For authorities, it serves as a cautionary tale to ensure that penalties and actions are within the scope of the notice and adhere to the principles of natural justice.

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 or on his Mobile +91-9999005379.

Source: CESTAT Bangalore

Disclaimer

Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

www.aadrikaalaw.com

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20316 of 2022

(Arising out of Order-in-Appeal No.791/2022 dated 23.03.2022
passed by the Commissioner of the Customs (Appeals), Bangalore.)

**M/s. Nippon Express (India) Private
Limited**

"The Icon", No.8, 4th Floor,
80 feet Road, HAL 3rd Stage,
New Thippasandra,
Bangalore - 560 075.

Appellant(s)

VERSUS

The Commissioner of Customs

Airport & Air Cargo Complex,
Air India Sats Airfreight Terminal
KIAL, Devanahalli,
Bangalore - 560 300.

Respondent(s)

APPEARANCE:

None for the Appellant.

Shri Aripa S, Joint Commissioner (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 21292 /2025

DATE OF HEARING: 21.08.2025

DATE OF DECISION: 21.08.2025

PER: D.M. MISRA

None present for the appellant. Heard learned Authorised
Representative (AR) for the Revenue.

2. The only ground on which the present appeal has been filed relates to imposition of penalty of Rs.2,000/- under Section 117 of the Customs Act, 1962. In the appeal memorandum, it has been pleaded that even though in the show-cause notice, the proposal for penalty under Section 112 and 114AA of the Customs Act, 1962 have been invoked, however, in the adjudication order, penalty was imposed on the appellant under Section 117 of the Customs Act, 1962. Thus, the appellant was not given an opportunity to contest the proposal of penalty under Section 117 of the Customs Act, 1962 leading to violation of principle of natural justice; and even the same was pleaded by the appellant before the learned Commissioner (A), the same was not considered and their appeal was rejected.

3. We find from the records that there is no proposal for penalty under Section 117 of the Customs Act, 1962 in the show-cause notice but the penalty was imposed on the appellant resorting to the said provision, which is beyond the scope of show-cause notice, hence contrary to the Principle of Law laid down by the Hon'ble Supreme Court in the case of **CCE vs. GAIL: 2007-TIOL-250-SC-CX**. and ought to have been considered by the Commissioner (A). In these circumstances, the impugned order confirming the penalty under Section 117 of the Customs Act, 1962 cannot be sustained. Consequently, the penalty imposed on the appellant is set aside and the appeal is allowed.

(Dictated and pronounced in Open Court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)