**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.I**

**APPEAL NO.C/128/2011**

(Arising out of Order-in-Appeal No.122/Mumbai-III/2010 dated 19/08/2009 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Sun Pharmaceutical Industries Ltd.,** : **Appellant**

**VS**

**Commissioner of Customs** : **Respondent**
**Mumbai-III**

**<u>Appearance</u>**

Shri.Kiran Sawale, Advocate for Appellant
Ms.Trupti Chavan, Asst. Comm. (AR) for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**
**Hon'ble Shri P Anjani Kumar, Member (Technical)**

**Date of hearing : 07/03/2019**
**Date of decision : 07/03/2019**

**ORDER NO.A/85560/2019**

***Per : Dr. D.M. Misra***

1. This is an appeal filed against Order-in-Appeal No.122/Mumbai-III/2010 dated 19/08/2009 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the appellant had filed 14 shipping bills declaring the FOB value of the respective products as set out in para 5 of the adjudication order. Alleging that the FOB value declared by the appellant is lesser than the PMV value resulting into excess claim of DEPB, assessment was finalized. However, while finalizing the assessment, the learned adjudicating authority, has accepted the FOB value and allowed the DEPB benefit accordingly. But, he has imposed penalty of Rs.1,40,000/- under Section 117 of the Customs Act, 1962 for mis-declaration of the PMV.

3. Learned Advocate for the appellant submits that since their FOB value has been accepted, DEPB benefit has been extended on the said value imposition of penalty is unwarranted and uncalled for. He submits that the observation of the adjudicating authority is self contradictory. Further, he submits that even though the learned Commissioner (Appeals) recorded that there could be a maximum penalty of Rs.1.00 lakh under Section 117 of the Customs Act, but he chose to confirm the penalty of Rs.1,40,000/-.

4. Learned AR reiterated the findings of the learned Commissioner (Appeals).

5. We find that while finalizing the assessment of the export goods the adjudicating authority has accepted the FOB value as declared by the appellant and allowed the DEPB benefit accordingly. Therefore, imposition of penalty under Section 117 of the Customs Act, 1962 in our opinion is unwarranted. Hence, the penalty is set aside and the

appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced and dictated in Court)

***(P Anjani Kumar)***
***Member (Technical)***

**(D.M. Misra*)***
***Member (Judicial)***

***PJ***