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-CUSTM-AXP-APP-886/2022-23 dated 24.08.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.)

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

VERSUS

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

APPERANCE:

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 <u>any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act</u> 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-CUSTM-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