

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III**

Customs Appeal No.51812 of 2025

[Arising out of Order-in-Appeal No.CC(A) CUS/D-I/Export/NCH/900/2025-26 dated 08.08.2025/11.08.2025 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

M/s. Unnati Cargo,
354, Dakshinayan, Plot No.19,
Sector-4, Dwarka,
New Delhi-110 078.

....APPELLANT

Versus

Commissioner of Customs (Export),
New Customs House, Near IGI Airport,
New Delhi-110 037.

.....RESPONDENT

Appearance:

Present for the Appellant : Mr. Salil Arora, Advocate
Present for the Respondent: Mr. Ram Pravesh Prasad, Authorised Representative.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

Final Order No.50983 /2026

Date of Hearing:13.05.2026

Date of Decision:22.05.2026

BINU TAMTA:

1. The exporter, **M/s. Aprazer Healthcare Pvt. Ltd.** (IEC-AAQCA2323K) has filed Shipping Bill No.1025080 dated 28.04.2022 through the authorized Customs Broker, namely M/s. Unnati Cargo¹ to export different types of pharmaceutical medicines having total FOB value of Rs.14,68,408/- to Iraq. The goods contained in the box no.13 & 17 of the impugned Shipping Bill was found to have contained item

¹ The Appellant

"MIGRAN (Caffeine (100mg) + Ergotamine Tartrate (1mg) + Paracetamol (250mg) + Prochlorperazine (2.5mg) (Nos.5000) of value Rs.16,221/-.

2. 'ERGOTAMINE' is notified as 'controlled substance' covered under Schedule-B to Narcotics Drugs and Psychotropic Substances (Regulations of Controlled Substances) Order dated 26.03.2013². As per clause 10 of the said Order, no person shall export any controlled substance in Schedule-B except in accordance with the condition of 'No Objection Certificate'³ issued by the Narcotics Commissioner. The exporter failed to provide required NOC issued by the Narcotics Commissioner to export Ergotamine. Further, during the examination, an extra medicine i.e. Ledifos (Ledipasvir 90mg & Sofosbuvir 400mg), 50 bottles (each containing 28 tablets) were also found in box no.1 besides other medicines as per packing list. Accordingly, the goods were seized on 06.05.2022 under Section 110 of the Customs Act, 1962⁴ on a reasonable belief that the consignment is not fit for export being restricted (NOC from Narcotics Commissioner is required) and mis-declaration and accordingly were liable for confiscation under Section 113 of the Act.

3. It is alleged that the CHA M/s. Unnati Cargo contravened or failed to comply with the provision of the NDPS Act, 1985 and Customs Broker Licensing Regulations, 2014⁵ 10(d) as they have not advised their client to adhere with the provisions of the NDPS Act, 1985 and filed the Shipping Bill without the export authorization issued by the Narcotics

² NDPS Order

³ NOC

⁴ The Act

⁵ CBLR, 2018

Commissioner. The customs broker, the Appellant vide letter dated 02.11.2022 has requested for waiver of SCN and PH in the instant case, which was accepted by the Department.

4. After due process, Adjudicating Authority passed the order-in-original dated 14.11.2022 wherein the goods were confiscated and penalty of Rs.50,000/- (Rupees Fifty Thousand Only) was imposed on the appellant under Section 117 of the Act. The appeal filed by the appellant has been dismissed by the impugned order⁶.

5. The issue in the present appeal is limited to the imposition of penalty under the provisions of Section 117 of the Act. The first submission of Shri Salil Arora, the learned Counsel for the appellant is, if CBLR is treated as provisions of the Act then for invoking section 117 there should be no express penalty elsewhere for such contravention or failure. Since the allegation in the present case is regarding violation of Regulation 10(d) of CBLR, the provisions thereof under Regulation 18 provides for imposition of penalty for violation of Regulation 10(d) and therefore, no penalty can be imposed on the appellant by virtue of Section 117. The other limb of his argument is that if Regulations are treated as *sui-generis* and not part of the Act and its provisions then Section 117 cannot be invoked because it is applicable only for contravention of the provisions of Customs Act of which CBLR is not a part. The second submission is that Serial No.6 of Schedule-B provides only 'Ergotamine and its salts' and does not mention its preparation thereof. The learned Counsel has relied on a

⁶ Order-in-Appeal No.CC(A)CUS/D-I/Export/NCH/900/2025-26 dated 11.08.2025

recent decision of this Tribunal in the case of **M/s Videojet Technologies (I) Private Ltd versus Joint Commissioner of Customs Preventive Commissionerate, New Delhi**⁷.

6. Shri Ram Pravesh Prasad, the learned Authorised Representative representing the Revenue, reiterated the findings of the authorities below and submitted that in the present case, the export documents clearly indicated the product "MIGRAN" containing Ergotamine Titrates. Ergotamine is specifically notified as a controlled substance under Schedule-B of the NDPS (Regulation of Controlled Substances) Order, 2013. Export of such substance requires prior authorization from the Narcotics Commissioner. A Customs Broker, who is licensed and authorized to operate in the Customs area, is expected to be aware of such restrictions and advise the exporter accordingly. Failure to do so constitutes a clear violation of Regulation 10(d) of CBLR, 2018. Revenue further submits that the role of the Customs Broker is not limited merely to filing documents. The Customs Broker is expected to act as a compliance facilitator ensuring that the exporter adheres to all statutory requirements. In the present case, the Customs Broker failed to verify whether export authorization from the Narcotics Commissioner had been obtained before filing the Shipping Bill. Had the Customs Broker exercised due diligence and advised the exporter appropriately, the attempted export of restricted goods could have been prevented. Further, the presence of undeclared Ledifos medicine in the consignment also demonstrates lack of diligence on the part of the exporter as well as the Customs Broker. The Customs Broker facilitated

⁷ Final Order No.50753 of 2025 date of decision 23.05.2025 in Customs Appeal NO.51787 of 2021

filing of export documents despite the presence of undeclared goods which were subsequently detected during examination.

7. Revenue also submits that the appellant's contention regarding lack of knowledge is not acceptable. The Customs Broker is expected to possess sufficient knowledge of Customs law and allied legislation. The mere fact that the Department sought technical clarifications during investigation does not absolve the Customs Broker from his statutory obligation to ensure compliance with the law. The learned Authorised Representative has submitted that the Adjudicating Authority and the Commissioner (Appeals) have rightly concluded that the Customs Broker failed to discharge his duties and facilitated the tempted export of restricted goods by filing the Shipping Bill without verifying statutory compliance. The penalty of Rs.50,000/- imposed under Section 117 of the Act is only a minor penalty considering the seriousness of violation. The learned Authorised Representative has relied on the decisions in the case of **M. Younus Ali versus Commissioner of Customs (Export), Chennai**⁸ and **Shri Rama Thenna Thayalan versus CESTAT & Commissioner of Customs**⁹ to say that customs brokers are responsible for ensuring compliance with custom laws and cannot escape liability by claiming ignorance or reliance on importer or exporter declarations. The customs brokers are obligated to verify the correctness of declarations and advise their clients appropriately.

8. Having considered the rival submissions on both sides and perused the records of the case, I find that on merits, the issue stands covered

⁸ 2017 (2) TMI 47 (CESTAT-Chennai)

⁹ 2021 (12) TMI 47 (Madras High Court)

by the decision of this Tribunal in the case of **M/s Videojet Technologies (I) Pvt. Ltd.** In the said case, the appellant imported ink and ink related consumables containing various ingredients, including Methyl Ethyl Ketone (MEK) ranging from 35% to 99% without obtaining NOC from the Narcotic Commissioner. The Bench examined that MEK is covered at Serial No.10 of Schedule-C and it does not include goods or materials which contain MEK or preparations of MEK or salts of MEK. It was, therefore, observed that wherever the intention was to cover not only the controlled substance but also its salts, the schedule indicates so. The conclusion was that NOC from the Narcotic Commissioner was not required to import goods which contain MEK and such NOC is required only to import MEK. Applying the same principle, I find that Schedule-B only refers to 'Ergotamine and its salts' and not preparations thereof. The contents of Ergotamine being only 1%, would lead to the conclusion that the product in question is only preparation of Ergotamine and the same is not covered under Serial No.6 of Schedule-B. The relevant contents of **Schedule-B** are given below:-

“SCHEDULE B (Schedule B substances are those controlled substance whose export from India is subject to controls as specified in this Order.)

1. Acetic anhydride
2. N-Acetylanthranilic acid
3. Anthranilic acid
4. Ephedrine, its salts and preparations thereof
5. Ergometrine and its salts
- 6. Ergotamine and its salts**
7. Isosafrole
8. Lysergic acid and its salts
9. 3, 4-methylenedioxyphenyl-2-propanone

10. Methyl ethyl ketone
11. Norephedrine (Phenylpropanolamine), its salts and preparations thereof
12. 1-phenyl-2-propanone
13. Phenylacetic acid and its salts
14. Piperonal
15. Potassium permanganate
16. Pseudoephedrine, its salts and preparations thereof.”

9. Consequently, I am of the opinion that though Ergotamine is a controlled substance under the NDPS Regulations and requires NOC from the Narcotic Commissioner, however, the product in question is not covered under the category of 'Ergotamine and its salts' and at the most can be termed as preparation of Ergotamine, which is beyond the scope of Schedule-B. In such cases, the **Division Bench** in **Videojet Technologies (I) Pvt. Ltd.** has already observed that NOC from Narcotics Commissioner is not required to import the goods and therefore, no penalty can be imposed on the appellant for holding the goods liable for confiscation and alleging mis-declaration leading to violation of the provisions of CBLR.

10. With regard to the excess quantity of medicine i.e. Ledifos (50 bottles containing each 28 tablets), I find that the exporter had submitted that they had purchased the said medicine further from M/s. Galaxy Super Specialty and had pleaded ignorance about the packing for the export consignment. In such an event, it is too much to attribute any knowledge on the Customs Broker and therefore, no penalty is justified.

11. The submission of the learned Authorised Representative on the duties and responsibilities of Customs Broker under CBLR that he is supposed to be well versed with the provisions of the Customs Act, and other allied laws and cannot claim ignorance of the applicability of the statutory provisions is not doubted. There is no dispute about the responsibilities of the Customs Broker, however, in the peculiar facts of the present case, where the Department itself had no clarity and sought clarification from multiple authorities including the Narcotics Commissioner, CRCL and Indian Pharmacopoeia Commission to determine whether the said preparation fell under the controlled substance category. Therefore, it is argued that expecting a Customs Broker to possess such technical knowledge is unreasonable. In that view, no positive responsibility can be attributed on the Customs Broker on this issue requiring in-depth analysis and chemical testing. Therefore, neither the submissions nor the decisions relied on in this regard by the learned Authorised Representative has any merits in the facts of the case.

12. Now coming to the other submission on the applicability of Section 117 of the Act, the same is a residuary provision under which penalty can be imposed only in the event there is no other provision for imposing penalty. The provisions of CBLR are self-contained and specifically provides for imposition of penalty. Regulation 18 deals with imposition of penalty for violation of the provisions of the Regulations, is set out below: -

“18. Penalty.—

(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand

rupees on a Customs Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations. (2) The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker. (3) The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or F card holder or G card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.”

In view of the specific provisions above, the learned Counsel is right in contending that no penalty can be imposed under the provisions of Section 117 of the Act.

13. In light of the discussion above, I hold that the impugned order is unsustainable and is hereby set aside. The appeal is, accordingly allowed.

[Order pronounced on 22nd May, 2026]

**(BINU TAMTA)
MEMBER (JUDICIAL)**

Ckp.