



**::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::**  
**O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,**  
 द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन / 2<sup>nd</sup> Floor, Central Excise, Bhavan,  
 रेस कोर्स रिंग रोड, / Race Course Ring Road,  
 राजकोट / Rajkot- 360001  
 Tele Fax No. : 0281 – 2477952/2441142 Email cexappealsrajkot@gmail.com



**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/104 /BVR/2016	109/R/2016	17.05.2016,

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-014-2017-18**

आदेश दिनांक / Date of Order :	29.05.2017	जारी करने की तारीख / Date of issue:	05.06.2017
----------------------------------	------------	--	------------

**श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /  
 Passed by Shri Uma Shanker, Commissioner (Appeals-III)**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
 Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :-

घ **अपीलकर्ता/ प्रतिवादी का नाम एवं पता / Name & Address of the Appellant/ Respondent :-**  
**M/s. Alvita Pharma P. Ltd., Gopal Palace, Near Nehru Nagar Circle, Satelite Road, Ambavadi, Ahmedabad 380 015**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
 Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /  
 Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
  - (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /  
 The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
  - (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी चाहिए। /  
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above
  - (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में सलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि टस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनवेट जमा की ली गई गलत राशि
  - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
- For an appeal to be filed before the CES  
TAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
- Under Central Excise and Service Tax, "Duty Demanded" shall include :
- amount determined under Section 11 D;
  - amount of erroneous Cenvat Credit taken;
  - amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससट मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
  - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
  - यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
  - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायादिधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
  - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदनों के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule. 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
  - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पदों कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

M/s. Alvita Pharma Private Limited, B-203, Gopal Palace, Nr. Nehru Nagar Circle, Satellite Road, Ambavadi, Ahmedabad – 380 015 (hereinafter referred to as "the appellant") had filed the present appeal against the Order-In-Original No. 109/R/2016 dated 17.05.2016 (hereinafter referred to as "the impugned order"), passed by the Assistant Commissioner, Central Excise Division, Surendranagar (hereinafter referred to as the 'adjudicating authority')

2. The facts of the case are that, the appellant in the capacity of Merchant Exporter, has filed rebate claim on 18.03.2016 in respect of goods exported on payment of duty under the Form ARE-2 in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended readwith Rule 18 of the Central Excise Rules, 2002. On verification of the documents, it is noticed that (i) they have mentioned the Asstt. Commissioner (Maritime Commissioner) of Central Excise, Mumbai from whom rebate shall be claimed, however they filed rebate claim with the Asstt. Commissioner, Central Excise, Surendranagar; (ii) the manufacturer have procured the raw materials for use in manufacture of exported goods without payment of duty in terms of Notification No. 43/2001-CE(NT) dated 26.06.2001 as amended readwith Rule 19 of Central Excise Rules, 2002 and therefore goods manufactured by using such raw materials is to be exported in terms of Noti.No. 42/2001-CE(NT) dated 02.06.2001; and (iii) the appellant has exported final product on payment of duty under claim of rebate under rule 18 of Central Excise Rules, 2002 readwith Noti.No. 19/2004-CE(NT) dated 06.09.2014 as amended and have filed ARE-2 instead of ARE-1 as per the condition No. 3(a)(iv) of the said notification. Therefore SCN was issued on 07.04.2016 proposing rejection of the rebate claim. The adjudicating authority vide impugned order rejected the rebate claim.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeal on the following grounds:-

(i) There is no dispute regarding the export of goods and following the procedures as per Central Excise Law. The dispute is only that the appellant is eligible for rebate of duty paid on finished goods or not when such goods manufactured from the inputs procured without payment of duty.

(ii) It is to submit that as per para 3(b)(i) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended, the rebate claim shall be lodged with the Assistant Commissioner or Dy. Commr. of Central Excise having jurisdiction over the factory of manufacturer. In view of the above, the appellant has filed the rebate claim with jurisdictional Asstt. Commissioner. It is a procedural/technical error and for such error the benefit cannot be denied on such grounds.

(iii) It is submitted that adjudicating authority has erred in conclusion that the final product can only exported in terms of 'sub-rule (1) of Rule 19 of Central Excise Rules, 2002 readwith Noti.No. 42/02001-CE(NT) dated 26.06.2001, as amended. The adjudicating authority



has not considered the provisions of CBEC's Excise Manual of Supplementary instructions, 2005 at the time of conclusion of the case. The appellant referred para 6.1 – Procedure for export of Part-V – Export under claim for rebate of duty on excisable material used in the manufacture of export goods. On plain reading of the said para, it appears that the exporter has option to pay the duty on finished goods (if these are excisable) and claim the rebate of duty. The appellant has availed the option envisaged under the above mentioned para and claimed the duty as rebate of central excise duty under Rule 18 of the Central Excise Rules, 2002. Further, the above provisions have been made on 17.05.2005 whereas the Circular quoted in the impugned order is of 02.06.2004 and 11.01.2005 i.e. much prior to issue of CBEC's Excise manual of Supplementary Instructions, 2005. Hence, the adjudicating authority is failed to consider the latest provisions of Rules on the issue at the time of conclusion. The appellant has relied on the judgment of Hon'ble Supreme Court in the case of M/s. Spentex Industries – 2015 (324) ELT 686 (S.C.) and submitted that Hon'ble Supreme Court of India has dismissed the Review Petition filed by the department against the said judgment as reported at 2016 (336) ELT A136(SC). The above said case law and principles set therein have become settled legal position and to be followed in letter and spirit.

(iv) The adjudicating authority has conclude that the reliance placed by the appellant (sub-para 6.1 of para 6 – procedure for export [part-V] of Chapter 8 of CBEC's Excise Manual Supplementary Instructions, 2005 is grossly misplaced and misconceived. It is submitted that the adjudicating has failed to interpret in correct way. It is clearly mentioned therein that *the exporter has option to pay duty on finished goods (if these are excisable and claim rebate of such duty. He may also export the excisable goods without payment of duty.* Thus, the conclusion of the adjudicating authority is found not correct. In the present case the appellant has requested the refund of duty paid only on manufactured product i.e. on finished goods as it was excisable. Further, the Government under the para specifically mentioned that *"In both cases, fresh ARE-1 is not required because export will be effected on ARE-2 itself."* In view of this, the appellant has corrected exported under ARE-2.

4. Personal Hearing in the matter was held on 24.03.2017. Shri A.N. Shah, Consultant attended the same on behalf of the appellant and reiterated the contents of the Appeal Memorandums and submitted that the raw materials procured without payment of duty. He also submitted citation in the case of Iscon Surgicals – 2016 (344) ELT 108 (Raj.).

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum filed by the appellant and submissions made by the appellant at the time of personal hearing. The limited issue to be decided in the present appeal is whether the rejection of rebate claim for the reason enumerated in the impugned order, is proper or otherwise.



6. I find that the adjudicating authority has rejected the rebate claim of the appellant on the ground that the appellant has mentioned the different authority before whom the rebate claim is to be filed. They mentioned address of the Assistant Commissioner, Central excise, New Panvel whereas the claim was filed with the Assistant Commissioner, central Excise, Surendranagar. It has also been observed that the said refund claim was filed alongwith ARE-2 instead of ARE-1. I find that it is settled legal position that the rebate claim is in the form of scheme to promote exportation of goods and therefore the procedural infractions of notifications/circulars can be condoned, if exports have really taken place and the appellant cannot be deprived of substantive benefit. I also find that as per the Notification No. 19/2004-CE (NT) dated 06.09.2004, it has been stipulated that the claim shall be lodged with the Asstt. / Dy. Commissioner having jurisdiction over manufacturer's unit or with the Maritime Commissioner or the Maritime Commissioner. Further, I observe that in the present case, the manufacturer has procured the raw materials without payment of duty for use in manufacture of goods to be exported in terms of Noti. No. 43/2001-CE (NT) dated 26.06.2001, as amended. The Condition No. (vi) of the said Notification substituted vide Notification No. 10/2004-CE(NT) dated 03.06.2004 provides that the goods manufactured out of such raw material procured without payment of duty, shall be exported on the application in the Form ARE-2.

7. The rebate claim has also been rejected for the reason that the manufacturer has procured the raw materials without payment of duty for use in manufacture of exported goods in terms of Noti.No. 43/2001-CE (NT) dated 26.06.2001 as amended readwith Rule 19 of the Central Excise Rules, 2002; that in terms of condition No. (vi) of the said notification, as amended read with Circular No. 792/25/2004-CX dated 02.06.2004 and Circular No. 805/2/2005-CX dated 11.01.2005, the goods manufactured or processed using the said materials can only be exported in terms of sub-rule (1) of Rule 19 of the Central Excise Rules, 2002 i.e. without payment of duty under bond/UT-1. In the instant case, I find that the manufacturer was allowed to procure raw materials without payment of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 with direction to follow the conditions and procedure as laid down under Noti.No. 43/2001-CE(NT) dated 26.06.2001 readwith Rule 19(2) of the Central Excise Rules, 2002 and Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001. The said notification has been amended vide Notification No. 10/2004-CE(NT) dated 02.06.2004, by which condition No. (vi) of the Notification No. 43/2001-CE(NT) has been substituted as under:-

“(vi) The goods shall be exported on the application in Form ARE-2 specified in the Annexure and the Procedures specified in the Ministry of Finance (Department of Revenue) notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001 (vide G.S.R. 471(E), dated the 26th June, 2001, shall be followed.”;

Further, the explanation-II has also been inserted which reads as under:-

"Explanation II - For the removal of doubt, it is clarified that the goods manufactured or processed using the excisable goods so procured without payment of duty under this notification shall be exported in terms of sub-rule (1) of rule 19 of the Central Excise Rules, 2002."

In view of the above provisions set out in the Notification, it is clear that the manufacturer-exporter is required to export the goods manufactured using the excisable goods so procured without payment of duty under ARE-2 under the procedure specified in Noti.No. 42/2001-CE(NT) dated 26.06.2001 readwith Rule 19(1) of the Central Excise Rules, 2002. However, in the present case, the appellant being merchant exporter has cleared the finished goods for export on payment of duty in terms of Noti.No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002 which is not allowed in terms of the aforesaid provisions. Further, duty paid character of the goods can not be established from the details reflected in ARE-2. It is settled legal position that in order to grant rebate of central excise duty paid on excisable goods on its exportation, the duty paid character and its due exportation is required to be confirmed. In view of the above, I do not find any infirmity with the impugned order.

8. In view of the above facts, discussions and finding, I reject the appeal filed by the appellant and uphold the impugned order.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By Speed Post

To,  
M/s. Alvita Pharma Private Limited,  
B-203, Gopal Palace,  
Nr. Nehru Nagar Circle,  
Satellite Road, Ambavadi,  
Ahmedabad – 380 015

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise & Service Tax, Bhavnagar.
3. The Assistant Commissioner, Central Excise Division, Surendranagar.
4. The Superintendent, Central Excise, Range- I, Surendranagar.
5. PA to the Commissioner (Appeals- III), Central Excise, Ahmedabad.
6. Guard File.